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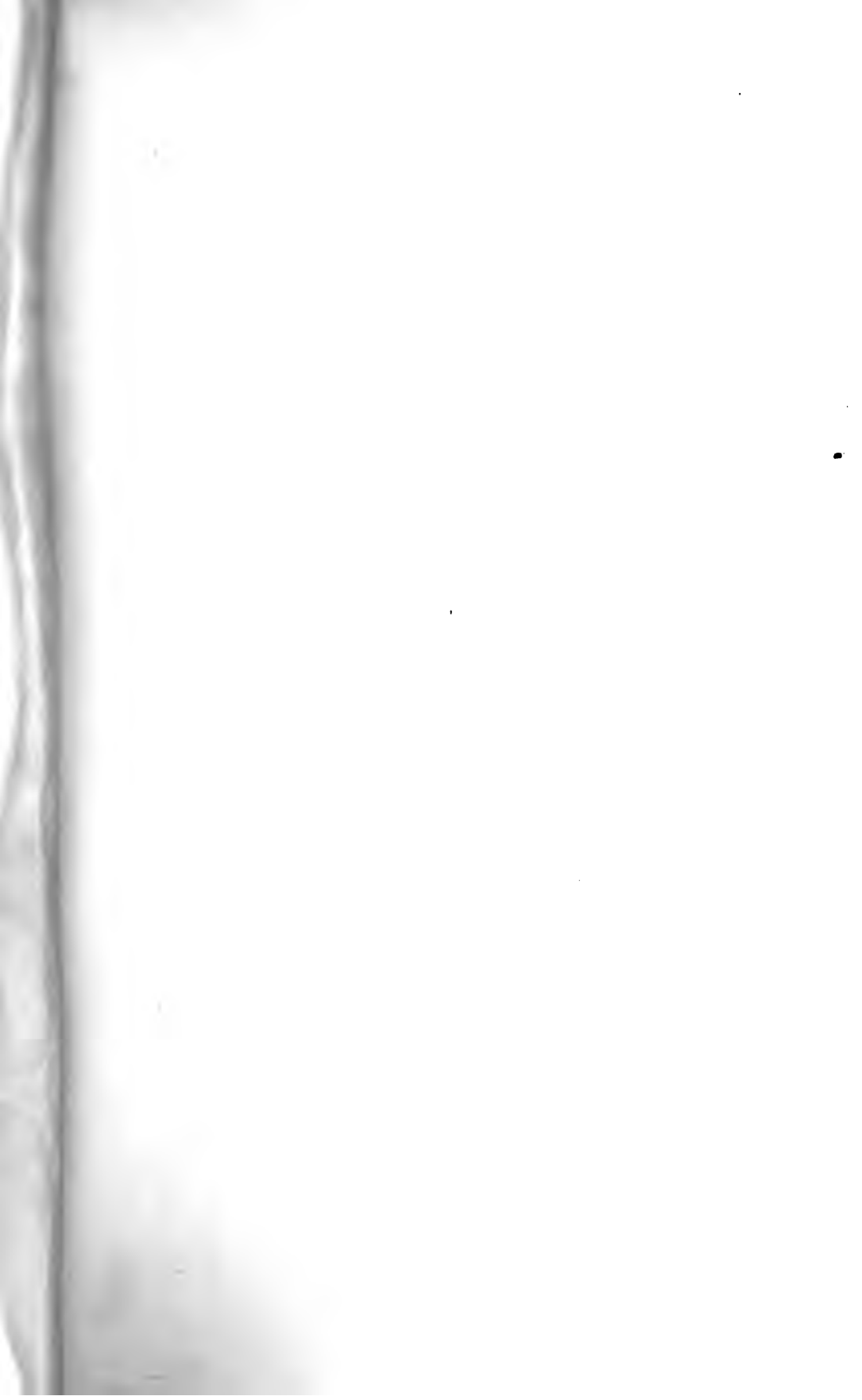
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THE
AMERICAN ADMIRALTY

ITS

JURISDICTION AND PRACTICE

WITH

PRACTICAL FORMS AND DIRECTIONS

BY

ERASTUS C. BENEDICT, LL.D.

"The worst Civil Code would be one which should be intended for all nations indiscriminately. —
The worst Maritime Code, one which should be dictated by the separate interests
and influenced by the peculiar manners of only one people." — PARDENUS.

A NEW AND ENLARGED EDITION.

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TO THE HONORABLE
SAMUEL NELSON, LL.D.,

WHOSE EMINENT CAREER AS JUDGE AND
CHIEF JUSTICE OF THE STATE OF NEW YORK,

WAS FITLY FOLLOWED BY HIS ELEVATION TO
THE SUPREME COURT OF THE UNITED STATES,

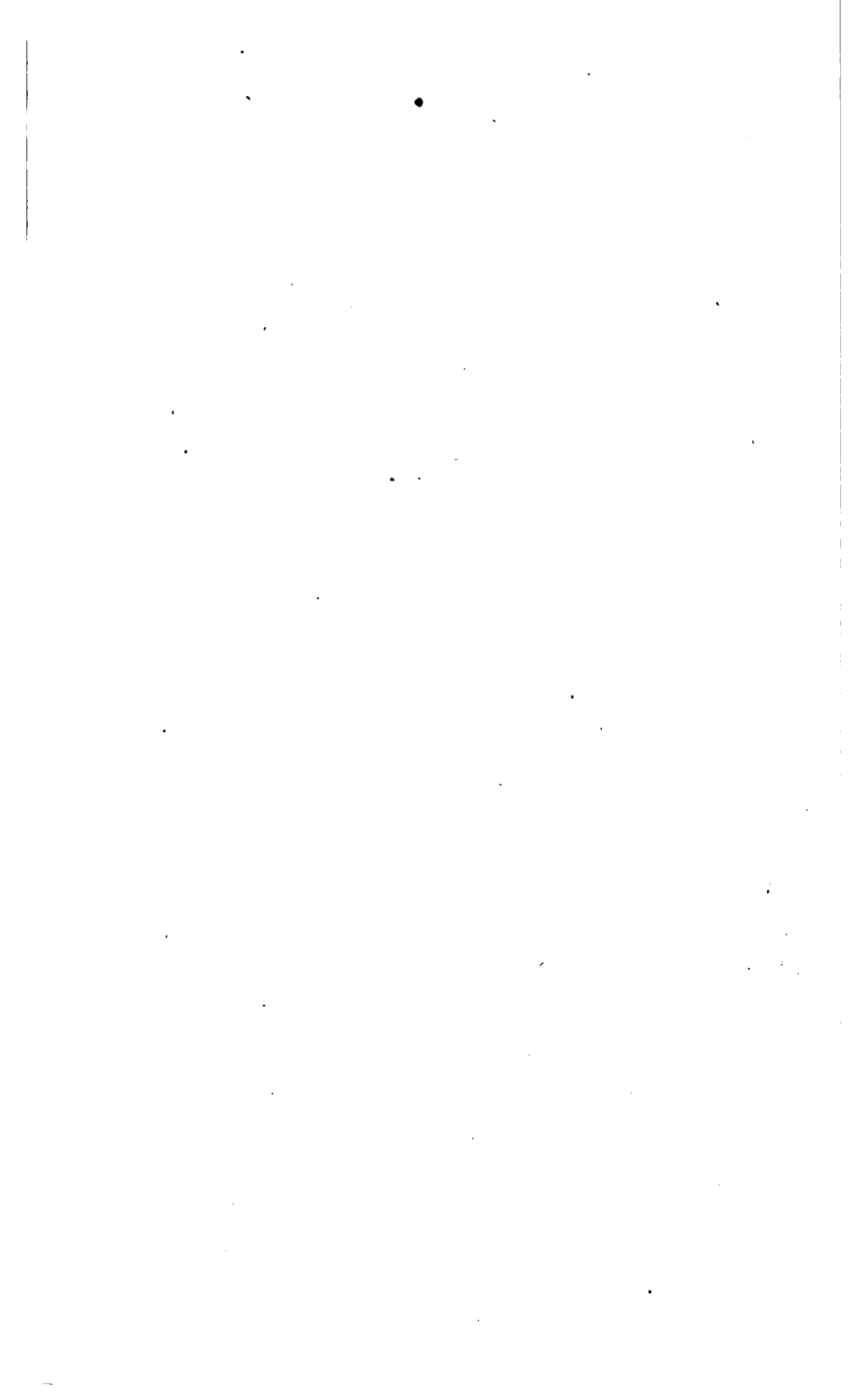
WHERE THE LABORS OF A QUARTER OF A CENTURY
HAVE ADDED TO HIS JUDICIAL FAME THE RARE DISTINCTION OF

A GREAT ADMIRALTY JUDGE,

THIS WORK IS BY PERMISSION INSCRIBED

IN TESTIMONY OF RESPECT FOR HIS

LEARNING AND ABILITY, AND FOR HIS PRIVATE AND OFFICIAL CHARACTER,
AND WITH A GRATEFUL SENSE OF HIS CONSIDERATION AND COURTESY.



THE HONORABLE SAMUEL ROSSITER BETTS, late Judge of the District Court of the United States for the Southern District of New York, to whom the first edition of this work was inscribed, having, after forty-four years of judicial service, resigned his office, because of his age and increasing infirmities, and being now deceased, the following record of the Court, at its first session after his resignation, is here inserted, as a fitting memento of one who so long and so ably performed the duties of Judge of the Court.

TUESDAY, May 7, 1867.

The Court meets pursuant to law, and is opened by proclamation.

Present — HON. JUDGE BLATCHFORD.

On motion of ERASTUS C. BENEDICT, ESQ., seconded by DANIEL LORD, ESQ., it is ordered that the following entry be made at length in the minutes of the Court, and that a duly certified copy thereof be sent by the Clerk of the Court to the HONORABLE SAMUEL R. BETTS, late Judge of this Court :

“The HONORABLE SAMUEL ROSSITER BETTS, LL.D., having resigned his office as Judge of the United States for this district, it is fit that the records of the Court should contain an expression of the high sense which the Bar of this Court, and his successor on the Bench, have of his character and services.

“JUDGE BETTS rose early to eminence at the Bar and on the Bench of the State of New York. In December, 1826, more than forty years ago, he was appointed to the Bench of this Court, during the Presidency of Mr. John Quincy Adams, Mr. Clay being then Secretary of State. The wisdom of their selection was soon vindicated by the industry, ability, and fidelity which he displayed as a Judge of this Court, and of the Circuit Court. With very slight interruptions from occasional ill health, the best powers of his clear and cultivated intellect, and his

careful and various learning, and enlightened love of justice, have, for that long judicial life, been devoted to the duties of his office, with an industry, ability, and constancy, as rare as they are honorable, and useful to the community and to the nation, and which would not have been possible, had he not possessed a physical constitution of remarkable vigor. Had all the decisions made by him been published when they were made, it would be seen that to him, more than to any other Judge, is due that constitutional administration of the Admiralty law which now prevails undisputed throughout the nation, and which, when he came to this Bench, was almost everywhere debatable ground; and it is but just to him to say that the views of that law, which he now holds in common with all the great Admiralty Judges, were the convictions of his earliest judicial investigations in this Court, and have always been consistently held and administered by him."

P R E F A C E.

THE Practice of the Admiralty Courts of this country, notwithstanding the increased attention which has been recently given to it, has been still so much neglected, that, with the exception of a few lawyers in the commercial cities, the bar make no secret of their ignorance of this branch of legal learning. Having imbibed the English notions on the subject, many have supposed the jurisdiction to be confined to a small class of cases, not worth the labor of learning a new course of proceeding. They do not seem to have adverted to that American view of the subject, which, springing out of the peculiar character of our institutions, considers the admiralty jurisdiction as an extensive and important branch of the national sovereignty, conferred exclusively upon the courts of the United States, for the wisest purposes.

Every day has given new cause to admire the profound sagacity, the practical wisdom, and the forecast of our fathers, in providing for an unknown future, and for a territory to be extended indefinitely, under the forms of our peculiar government. In the judicial and commercial grants in the Constitution, that wisdom is especially apparent, at this time, when the Commercial Era, with its new means and its new discoveries, has opened before us a most conspicuous and responsible career among the nations. To me it is quite clear, that those grants, in all the plenitude of their simple and comprehensive phraseology, convey to the general government only what is necessary to secure the equality and fraternity of the States as between themselves, and the strength and respectability of the nation. With fifty thousand miles of coasts and shores of navigable waters, no one can estimate the extent of our future commerce, nor the value to us of a system of admiralty and

maritime law, and course of procedure, uniform throughout the nation, and harmonious with the rest of the world.

Since the first edition of this work, the true principles of the admiralty jurisdiction have been laid down and enforced in many leading, important, and well-considered cases. It is also true that in many other cases of less importance, and but little discussed at the bar, the court has seemed, almost by inadvertence, to adopt some of the narrowest rules of the early English common-law courts, and to make exceptions to the great principles which it has repeatedly, after solemn arguments, recognized and enforced. Thus a case decided on no matter what insufficient reason, has sometimes become, under the much-abused rule, *stare decisis*, a long-lived precedent, and a source of law which is not law. To the admiralty branch of the law, this remark is more especially applicable, because no one can help seeing that there has been a certain drift of opinion, outside of the courts, and sometimes even on the Bench, in favor of doctrines which tended to exalt the power of the States, and to restrict the powers of the general government; and questions of admiralty jurisdiction have been considered as conflicts between two independent sovereignties, one of which was to be favored, and the other to be regarded with suspicion and distrust. The logic of events, judicial, as well as political, during the last few years, has, however, done much to change this drift, and to establish truer views of the constitution and nature of our government. Some cases have been quite recently reconsidered and overruled; and some principles have been established, which seem to be inconsistent with previously decided cases. And, while great progress has been made in bringing about a desirable harmony in the judicial doctrines as to the admiralty and maritime jurisdiction, it is not to be denied that much still remains to be done in that direction, and so much uncertainty still exists as to the result, that several portions of the work have been allowed to remain, which some will, doubtless, think might now with propriety be omitted as obsolete.

The following work is but an attempt to present the American view

of the subject, in such a light as to exhibit its proper importance, and to make it practically useful. If it comes up to the intention of the author, it will take a place left unoccupied by the highly useful works on admiralty practice, which have previously appeared. His purpose has been so to exhibit the subject, that the most inexperienced learner, as well as the riper professional student, can not fail, in reading it, to have his mind interested in the subject, and to be directed to the means of settling, satisfactorily, its general principles as well as its practical details.

He has endeavored to avoid a common error in elementary books of practice, of writing for those only who already understand the subject, leaving the beginner to pick up by experience and observation those rudimental principles and directions, which to him are of the first necessity. This has led to the insertion in each portion of the work — the Jurisdiction — the Practice — and the Forms — of many things which to some may seem unimportant.

In a practical matter, nothing can well supply the place of that emphasis and distinctness which come from visible illustrations. The practical forms are for that reason very full and various; they commence with the entire proceedings in an admiralty suit, consecutively arranged, and embrace numerous and important classes of maritime cases, presented under various aspects. As precedents from actual practice, they are intended to inculcate and illustrate principles, as well as to serve for practical forms; and it is believed they may be read with profit, if not with interest.

In this edition, the text has been carefully revised and improved, both by the insertion of new, and the excision of obsolete matter. Nearly four hundred new authorities have been cited, and a new chapter on prize causes has been added. The collection of rules of the Supreme Court, and of the Circuit and District Courts, for the New York districts, is believed to be unusually complete and accurate. The recent statutes relating to practice, and many new forms, together with an index of the

cases cited, have been added, and a fuller and more perfect general index has been substituted for the former one. These improvements, it is hoped, will make the work a more satisfactory presentation of the practice of the American courts of admiralty and maritime jurisdiction, as distinguished from courts of equity and common law, than was made in the previous edition.

The author takes pleasure in acknowledging the valuable aid received from the research and accuracy of his young professional brother, SAMUEL H. VALENTINE, Esq., in the preparation and publication of this edition.

E. C. B.

NEW YORK, 1870.

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THE AMERICAN ADMIRALTY.

CHAPTER I.

GENERAL VIEW.

§ 1. As commerce has increased, so the laws regulating, its transactions, and prescribing the rights and duties of its agents, and the proper jurisdiction of commercial tribunals, have increased in importance. Not the least important of commercial causes are those connected with maritime commerce, which so often brings together in interest and in conflict, the people of different nations, speaking different languages, and familiar with different codes and usages. Most especially is this true in our country, where, from the peculiar form of our institutions, there are two governments, with separate and independent judicial establishments extending over the same territory and the same individuals; that territory acquired from other nations and originally subject to their laws, and those individuals consisting, in large part, of the citizens and subjects of the other great commercial nations of the world, domiciled among us.

§ 2. The character and pursuits of seafaring life, and of maritime commerce, have in all countries been considered as of a peculiar nature. Their agents and instruments, animate and inanimate, have rights, privileges, and liabilities which do not belong to those of the land, and there are rules of conduct and of intercourse, as well as courts of justice, codes of law, and modes of administering them, which are especially devoted to the relations of maritime affairs. The ships of a nation, wherever they may be, are considered as a part of its territory, hence the encouragement of navigation and maritime commerce, and the proper regulation and em-

ployment of ships, have always been favorite objects of the laws of all commercial nations.¹

§ 3. In the earlier history of nations, when absolute rule and strong executive powers have exercised most of the functions of government, the affairs of the sea, so far as the nation was concerned, and of the navigable waters of the nation, have been usually administered by a naval officer of the highest dignity and station, holding his authority directly from the sovereign power, subordinate to the monarch alone, and clothed with many of the prerogatives of royalty. Almost all nations possessed of any maritime commerce, have thus had an officer, known sometimes by one name and sometimes by another in a greater or less degree similar to the English word *admiral*. Originally, admiralty jurisdiction was but another phrase for the power of the admiral. The mild and equitable system of admiralty law derives its descent, through a long line of modifications and meliorations, from the absolute and irresponsible rule of naval command, as the peaceful law of real estate, and the common law generally, have descended from the iron despotism of military dominion carried to its perfection in the feudal system.²

§ 4. The declaration of the great Roman orator, *cedant arma togæ*, uttered when Rome was the military mistress of the world, was then true only in the forum; the lapse of eighteen centuries has made it the law of society and the truth of history wherever civilization has shed its light on organized government. The administration of the law of the sea has passed into the hands of properly constituted courts of justice, while the admiral has been left in possession of the power and prerogatives of naval command alone, and has become judicially subject to the courts, which exercise, with less show, more quietly and usefully, the functions which he considered his most homely attributes. The system of law which is thus administered in maritime transactions, retains the

- Zouch's Jurisdiction of the Admiralty, Ass. 1; id. Ass. 9; 2 Brow. Civ. & Ad. Law, chap. 2; 3 Kent's Com. 1-21; Edw. Ad. Jur. 33; Abbott, Ship. 98.

² Hall's Ad. Intro. 7, 8; Godolphin's View of the Admiral Jurisdiction, chap. 1, 2; Zouch, Ass. 2, 3.

name of admiralty law, after the name and power of the admiral have ceased to be known in its execution. As maritime commerce came to be extended, and international commerce and intercourse became more frequent, the sea was considered the common highway of nations, where, for the purposes of business, all nations must be equal in right, and the common convenience, as well as the common right rendered necessary, and ultimately established general rules, as the Law of the Sea, to which all submitted as to a sort of maritime law of nations, and the courts of each nation enforced it. This is now called the general maritime law, and sometimes the general admiralty law. It is always administered by courts of nations, belonging to the family of nations.

§ 5. The admiralty law is indebted for many of its characteristics to the circumstances of the countries in which it was first administered. The countries that earliest reduced the law of the sea to a system, and adopted codes of maritime regulations, having been countries in which the Roman or civil law prevailed, the principles of that great system of jurisprudence were incorporated with, and gave character to, the maritime law; and so much were pure reason, abstract right, and practical justice mingled in that system, and so important was it that the general maritime law should be uniform and universal, that, in England, where the common law was the law of the land, the civil law was held to be the law of the admiralty, and the course of proceedings in admiralty closely resembled the civil law practice.*

§ 6. A court thus proceeding according to the course of the civil law, and without a jury, in England, was looked upon with jealousy by the judges of the courts of common law, who considered themselves the proper judicial guardians of English subjects. They professed to look upon the admiralty as an intruder, administering a foreign code, and, under a pretence of justice, seeking to steal away the hearts of the people from the trial by jury, and the sterner proceedings of the common law; and a concerted and vigorous effort was made to deprive the Court of Admiralty of a large

* 2 Bro. Civ. and Ad. Law, 348.

portion of the jurisdiction which it exercised; and the jurisdiction of that court was for a long time a vexed question. The bench and the bar, on both sides, were characterized by great learning and talent, and the contest was managed with much ability. It is not easy, now, to see how a candid mind could fail to yield to the argument of the admiralty judges. The numerical strength, however, of the party of the common law, was vastly superior to the other, and was led by Lord Coke, then Chief Justice of the King's Bench, as overbearing as he was learned; and as that court was superior to the Court of Admiralty, and had the power to control its proceedings by the writ of prohibition, it is easy to see that what the common law lacked in right, was more than made up in might, and the result could not long be doubtful. The jurisdiction of the admiralty was judicially contracted to the narrowest limits in that country, and, with some fluctuation, has remained so till recent statutes have again extended it in a most beneficial manner.*

§ 7. The contest between the two jurisdictions in England, and the triumph of the common law, came over to us in the English books, and did much to create in the minds of American lawyers, before, and even since the revolution, a prepossession in favor of a narrower jurisdiction of the English Admiralty, and occasionally, up to the present time, lawyers and judges of the most distinguished ability, have sought to transfer the English argument and authority to our country, and have insisted that the American Admiralty has not the liberal and beneficial jurisdiction which the English Admiralty anciently possessed, and which the continental courts still enjoy, but is confined to the exercise of those powers which necessity had compelled the King's Bench, in the days of its most arrogant triumph, to tolerate in England. This has not failed to keep unsettled the law of admiralty jurisdiction in this country; although, in the clearest language, the constitution of the United States gives to the federal judiciary, cognizance of "*all* cases of admiralty and maritime jurisdiction," and the act of Congress, in the same language, bestowed upon the

* Zouch, *passim*; Godolphin, *passim*; Prynne's Animadversions, *passim*; Waring v. Clarke, 5 How. 453; The Jerusalem, 2 Gal. 348; Edwards' Ad. Juris. 17; 3 and 4 Vict. c. 65; 9 and 10 Vict. c. 90.

district courts original jurisdiction of all civil cases of admiralty and maritime jurisdiction.

§ 8. Among the distinguished jurists who have insisted that the grant in the constitution embraces only those few cases of admiralty and maritime jurisdiction which were admitted by the English common lawyers, at the time of our Revolution, to be within the jurisdiction of the English Admiralty, is Chancellor Kent, who, after the elaborate investigation which the subject had received in the courts of the United States, still says, "the argument for the extension of the civil jurisdiction of the admiralty beyond the limits known and established in the English law, at the time of the formation of the constitution, is not free from great difficulty."^a And it is not to be denied, that decisions, arguments, and judicial dicta, abound in our reports, on both sides of the general question and of many of its subordinate points, which have served to keep the whole question open, so far as the decisions of the highest tribunal are concerned.^b But few cases, comparatively, involve a sufficient amount to give the Supreme Court jurisdiction on appeal; and in the cases which have been before that court, although it has been clearly and repeatedly, indeed uniformly, decided that the English rule of jurisdiction does not prevail here, still many cases seem to have been decided, even in that court, on purely English authority. It can hardly be doubted that, at some future time, when the same questions shall be again

^a 1 Kent's Com. 371, 377; *Ramsay v. Allegre*, 13 Wheaton's Rep. 614; *Bains v. The James and Catherine*, Baldwin's Rep. 544; *Waring v. Clarke*, 5 Howard, 441; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 Howard, 385; Const. Art. 3, § 2; Jud. Act of 1789, § 9.

^b Since the first edition of this work, the jurisdiction of the American Admiralty has been investigated in the Supreme Court of the United States, in the following cases:—

The Genesee Chief v. Fitzhugh, 12 How. 443; *Jackson v. The Magnolia*, 20 id. 296; *The People's Ferry Co. v. Beers*, id. 393; *Nelson v. Leland*, 22 id. 48; *Roach v. Chapman*, id. 129; *Phila. Wil. & Co. B. R. Co. v. Phila. and Havre de Grace Steam Tugboat Co.* 23 id. 209; *Morewood v. Enequist*, id. 491; *The St. Lawrence*, 1 Black. 522; *The Commerce*, id. 574; *The Potomac*, 2 id. 581; *The Plymouth*, 3 Wall. 30; *The Moses Taylor*, 4 id. 411; *The Hine v. Trevor*, id. 555; *The Eddy*, 5 id. 481; *The Rock Island Bridge*, 6 id. 213; *The Belfast*, 7 id. 624.

These cases have thrown much light on the subject; yet it is still true that they also are, in important points, irreconcilable; and the whole matter is thus left somewhat in doubt.

presented in a different form, and discussed with a wider range, rules will be established entirely consistent with the early elementary cases, and with the fundamental principles of maritime law.⁷

§ 9. Till that is done, however, the whole question is, in many minds, involved in so much uncertainty, that any part of it, even what is now considered as settled, may be expected to come up again for review and settlement. This uncertainty is in part to be attributed to the fact that a portion of the more ancient evidence of the admiralty law is not easily accessible. The commendable caution of the members of the Supreme Court in confining their written opinions to the points necessary to be decided, and the impracticability of giving, in the reports, the arguments of counsel at length, have deprived the profession of the benefit of the great learning and research, as well as of the broad and generous commentaries, of the distinguished lawyers who have discussed this subject before the courts. The interests of the community will therefore be promoted by bringing together, in convenient form, documents connected with the subject, which either have not been before published, or can only be found, in an authentic form, in books which are procured with some difficulty, and by accompanying them with such suggestions, principles, and authorities, as a somewhat extended and various practice in admiralty cases and a careful examination of the subject have shown to be important. In doing this, no apology will be considered necessary for giving to the whole the form of a brief historical and elementary treatise upon the admiralty jurisdiction of the United States, from which the simplest rudiments and the most familiar commonplaces will not be excluded, and where, sometimes, arguments and speculations will be mingled with decided cases, the dicta of judges, and the opinions of elementary writers.

§ 10. The admiralty and maritime Law consists of the principles

⁷ 1 Kent's Com. 871, 877; Conk. Treat. 2 edit. 137, 145; *Thompson v. The Catherina*, 1 Pet. Ad. 104, 118; *De Lovio v. Boit*, 2 Gal. 426, 429; *The Amiable Nancy*, 1 Paine, 111, 117; *De Lovio v. Boit*, 2 Gal. 398; *Waring v. Clarke*, 5 How. 473; *Bullock v. The Lamar*, 1 West. Law Journal, 444; *Tunno v. The Betsina*, 5 Am. Law Reg. 406; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 385; *Cutler v. Rae*, 7 How. 733; Opinion of Judge *Wayne*.

and rules which regulate the conduct, the business, and the property of the citizen in matters of admiralty and maritime character.

It is not the object of this work to treat of the elements of that system of law. They are to be found in the numerous elementary works and books of decided cases to which reference will be made in the following pages.

It is after the law of the case is ascertained that the question of great practical importance arises, What is the remedy, and where and how can it be obtained? To this the answer is found in that system of courts and officers, and of professional art and technical forms and proceedings, by and according to which justice is administered. This is Practice, in that sense which distinguishes it from Law, and it is in this sense that the practice of the American Admiralty is the subject of this work. This embraces the jurisdiction and organization of the admiralty courts, as well as their forms, modes, and rules of procedure, and the rights, duties, and responsibilities of their various functionaries.*

§ 11. The Practice of admiralty courts, in that narrower sense which embraces only the course of procedure in courts, is established with more certainty and uniformity, but is even less understood, than the jurisdiction of the courts and the system of law which is administered in them. That course of procedure was intended to be uniform throughout the nation, and in general harmony with the practice in the maritime courts of other nations; and Congress by an early statute prescribed such general uniformity, and, in 1842, authorized the Supreme Court of the United States, still further to perfect a general and uniform course of procedure in admiralty and maritime cases; and, in 1845, that court adopted rules regulating the practice in civil causes.

There have been several American works on the admiralty practice, of great merit and usefulness to the few lawyers who have hitherto cultivated this field of professional activity,—Hall's Admiralty Practice; Dunlap's Admiralty Practice; Betts' Admiralty Practice; and Conkling's Admiralty Practice. Had either of those

* *Vide* History of the Admiralty Practice; in *The American Ins. Co. v. Johnson*, Blatchford & H. 10; *The Mary Jane*, id. 390. ;

works been intended by their authors to meet what has long seemed to me the greatest want in this department of law, this treatise, probably, would not have been written. They are well-known, and valuable auxiliaries to the well-versed and experienced practiser in the admiralty courts; but those who are entering for the first time upon this unknown region of inquiry, have too often complained of the want of rudimental simplicity and clearness of instruction and direction, which, in subjects of this sort, are as convenient, if not as necessary, to ripe and cultivated men, as they are to children in the elements of general education.

§ 12. The whole subject is invested with a new importance by the act of Congress extending the admiralty jurisdiction to the great lakes — the inland seas of this continent — and the rivers connecting them, which are already the theatre of a maritime commerce far outvaluing that of all antiquity; and by the extension of our territory and settlements to Behring's Straits, on the Pacific ocean, and to the Arctic ocean, thus adding to our coasting trade immense voyages of six months' constant sailing, and making us the nearest maritime neighbors of the oriental world, and of most of the islands of the sea.* If my labors shall help to establish that uniformity of principle and decision which are necessary to the system, and which alone can give to this branch of the national judiciary its greatest usefulness, I shall enjoy the highest reward of professional industry. The first question which presents itself in this inquiry, is, What court has jurisdiction of the controversy?

* Act of February 12, 1845, 5 Stat. at Large, 726; The Genesee Chief, 12 Howard, 443; Treaty with Russia, 15 Stat. at Large, 539.

CHAPTER II.

JURISDICTION.

§ 13. JURISDICTION, as applied to courts, is the right to hear and determine judicially the subject-matter in controversy between parties to a suit or legal proceeding. The action of a court is either judicial or extra-judicial. If the law confers the power to render a judgment or decree in a case, then the court has jurisdiction, and its action is judicial. If the law does not confer such power, then the action of the court therein is extra-judicial. It has not jurisdiction.¹

§ 14. The jurisdiction of courts is a branch of that jurisdiction which is possessed by the nation as an independent power. The jurisdiction of the nation within its own sphere is necessarily exclusive and absolute. It is susceptible of no limitation not conferred by itself; any restriction upon it, deriving validity from another source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty, to the same extent, in that power which would impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territory, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.²

§ 15. The judicial power of the United States is limited, and, of course, all the courts of the United States are of limited jurisdiction,—limited by the grant of judicial power in the constitution, and by the acts of Congress distributing that jurisdiction to the

¹ *The State of Rhode Island v. The State of Massachusetts*, 12 Pet. 718; *Du-Pon. on Jurisdiction*, 21.

² *The Exchange v. McFaddon*, 7 Cranch, 136.

courts. The action of those courts extends and must be confined to the cases, controversies, and parties over which both the constitution and the laws have authorized them to act. As any proceeding is within or without the limits thus prescribed, it is or is not judicial, valid, and effectual. The constitution and the statute must both concur in conferring jurisdiction. The judicial power of the government is derived from the constitution. The disposal and distribution of it belongs to Congress. Many subjects of jurisdiction which are clearly embraced in the constitution, lie actually dormant, because Congress has never authorized their exercise by any of the courts.* In like manner, Congress has sometimes conferred powers which the constitution has not authorized them to confer, and so far the act of Congress is void.

§ 16. The judicial power may be limited to *places*, to *parties*, or to *subjects*, of a particular kind or character.

Place.—There are a variety of cases, offences, and controversies, which are within the jurisdiction of certain courts, simply because they happen or are committed in particular places. An offence may be committed in a fort, arsenal or dock-yard of the United States, or on the high seas: it is then, by reason of the place alone, subject to the jurisdiction of the courts of the United States. In such cases, jurisdiction depends on *place* alone.

Parties.—The judicial power of the United States extends to all cases affecting ambassadors and other public ministers and consuls, and to cases in which the United States, a state, or an alien, is a party. In such cases, the jurisdiction depends solely upon the *person* or *party*.

Subject-Matter.—In other cases jurisdiction is confined to subjects of a particular character. Subject-matter is as various as the law itself, embracing anything which properly comes within the sphere of legislation,—crimes and punishments, natural and social relations, contracts, obligations, duties, rights and wrongs; these are distributed among different tribunals, as the convenient admin-

* The State of Rhode Island v. The State of Massachusetts, 12 Pet. Rep. 720; Yeorhees v. The Bank of the United States, 10 id. 474; 1 Kent Com. 814; Turner v. The Bank of North America, 4 Dal. 8; McIntire v. Wood, 7 Cranch, 504; Smith v. Jackson, 1 Paine, 453.

istration of justice may require. Hence there are civil courts and criminal courts; ecclesiastical, military, and testamentary courts; courts of equity, of revenue, of international law, and courts of admiralty and maritime jurisdiction. Such courts have jurisdiction of their respective classes of cases, not by reason of the place where they arise, nor of the persons who may be parties to them, but by reason of the *subject-matter of the controversy*.⁴

§ 17. Whenever a court has jurisdiction of a controversy, whether it depend on place, party, or subject-matter, it has the power, according to its own course of procedure, to administer justice between the parties, so far as that controversy extends. If it be a court, and have jurisdiction, then, from the very force of these terms, it has the power necessary to enable it fully to adjudicate between the parties, and to enforce its decree. If it have power over the principal matter, it has it also over the incidents. If it have power to begin, it has power to finish, although in its course it may be called upon to consider and decide matters, which, as original causes of action, would not be within its cognizance.⁵

The duty of a court is commensurate with its power. It is as much the duty of a court to exercise jurisdiction where it is conferred, as not to usurp it where it is not conferred.⁶

§ 18. A peculiarity of our form of government compels us to look at the question of jurisdiction of the courts of the United States, in two points of view,—the political and the judicial. The political view of the question involves the inquiry as to what is the extent of the constitutional grant to the Government of the United States, as a national political sovereignty, separate and distinct from the state governments. This question arises before and independently of all courts and their organization, and depends upon the constitution alone. It was the question which was presented to the first Congress that met under the constitution, when they came to provide for the judicial wants of the new government, by or-

⁴ DuPon. on Juris. 21-27; Bank of the U. S. v. Deveaux, 5 Cranch, 61.

⁵ Bank of the U. S. v. Deveaux, 5 Cranch, 61; The American Ins. Co. v. Johnson, Blatchford & H. 10; Peck v. Jenness, 7 How. 624.

⁶ The St. Lawrence, 1 Black, 526.

ganizing courts to exercise the judicial power conferred on that government. The judicial view involves only the question, as to the extent of the legal jurisdiction of the tribunals created by Congress, and upon which it bestowed the power to exercise certain judicial powers of the national government. The constitutional grant to the nation was fixed and inflexible the moment the constitution was adopted. On the other hand, the organization and jurisdiction of the courts, and the distribution of judicial powers, was left to Congress, and has been always subject to such changes as the wants or the wisdom of successive periods might from year to year suggest. Thus, the question of the American Admiralty jurisdiction is not a question, as in England, between a court of admiralty and a court of common law (for there is no court of admiralty proper in this country, nor is there any common law of the United States), nor between trial by jury and trial by a judge; but it is only a question between the national government and the state governments. If it had always been considered in this light, the argument would have been found to turn upon considerations widely different from many of those which have been presented, and much of the difficulty which has been encountered on the subject would have vanished away. It is in this point of view that I shall first consider it, inasmuch as upon this, everything else depends. After that will be considered the less difficult question as to what may be the proper court. If any controversy belongs to the judicial cognizance of the United States Government, there can be no doubt or difficulty in ascertaining which of its tribunals must decide it.⁷

§ 19. The Constitution of the United States grants to the Federal Government, judicial power over . . . "*all cases of admiralty and maritime jurisdiction.*" This is the whole of the grant of that branch of judicial power; and, brief and simple as it is, upon its true construction depends the whole of the American Admiralty

⁷ Const. Art. 3, § 2; *Wheaton v. Peters*, 8 Pet. 658; *The State of Massachusetts v. Adams*, *The State of Rhode Island*, 12 Pet. 781; *The State of Rhode Island v. The State of Massachusetts*, 12 Pet. 721; *The U. S. v. Hudson*, 7 Cranch, 33; *The Genesee Chief*, 12 Howard, 459.

jurisdiction. It has received five different constructions. It has been contended,—

1. That this constitutional grant embraces only those few cases of which the English High Court of Admiralty was permitted to take cognizance, at the time of the American Revolution.

2. That it embraces all cases of which the English Admiralty anciently had jurisdiction, before the common law courts had by prohibition prevented the exercise of most of its powers.

3. That it embraces only the cases which were within the acknowledged competency of the British colonial courts of vice-admiralty, as they existed at the time of the American Revolution.

4. That it embraces only such cases as were within the actual jurisdiction of the state courts of admiralty, which were in existence prior to the adoption of the Constitution of the United States in 1788.

5. That the words *admiralty* and *maritime*, relate simply to subject-matter, and were used in that general sense which embraces all those cases relating to ships and shipping, and maritime commerce, which arise under the municipal maritime regulations of each nation, and those which arise under the general maritime law.*

In endeavoring to ascertain which of these constructions ought to prevail, I shall, in the first place, recur to some general principles and well-known facts connected with the constitution, which, although their relation to this subject may not at first be apparent, cannot fail to aid us in our inquiry.

* *Waring v. Clarke*, 5 How. 473.

CHAPTER III.

CONSTITUTIONAL CONSTRUCTION.

§ 20. THE constitution is to be construed according to the obvious import of its own phraseology. We cannot, by evidence from other sources, of the views or intentions of individuals, in framing or adopting that instrument, divert the language from its plain import. The intention of a people, or of a popular body, can be known only from their corporate acts, or from the results in which the whole, by the legal majority, concur.

The constitution was fully discussed, in the convention and before the people, and there is no evidence that the people or their representatives did not understand the constitution as it is written. Emanating from the people, its powers are granted by them, and it is the highest evidence of their will and intention. Most especially is this so, since the constitution, in the whole and in its parts, was the result of compromises. The views of no party were there embodied, nor were the intentions of any set of men there carried out; but, after full discussion and long deliberation, from patriotic motives, all yielded to it, and it was adopted as it was written, declaring, "We, the people of the United States, do ordain and establish this constitution."¹

§ 21. Its grants of judicial power, as well as of political sovereignty, are brief, sententious, and comprehensive. None of its words are to be disregarded, as without meaning, nor to be considered as used to round a period, or to give fulness and euphony to a sentence. Its phraseology was most carefully chosen, and all its words

¹ Constitution, Preamble; *Martin v. Hunter's Lessee*, 1 Wheat. 326, 341; *Gibbons v. Ogden*, 9 id. 187, 196; *Mad. Pap.* 1598-1604; *Aldridge v. Williams*, 3 How. 9; *Waring v. Clarke*, 5 id. 441; *Story on Const.* 135; *Livingston v. Van Ingen*, 9 Johns, 576.

are significant, and introduced for the purpose of conveying their appropriate shades of meaning.³

§ 22. It is a constitution, not a code. It has indeed the force of law, but it is also still higher than a law, in the usual sense of that word. It is an organic law, made by the people, and not by the legislature. In a few brief sections it establishes the frame of government, and fixes the general relations and inflexible guards of political society for a great nation, for successive ages. It is necessarily brief in its language, but far reaching and comprehensive in all its provisions. It was not intended to settle details, enumerate instances, or explain by illustration; but to establish principles, describe outlines, and fix the landmarks of political power, in such general manner, as to provide for an unknown future, and the circumstances of a territory, destined to be indefinitely extended.⁴

§ 23. It is a constitution of grants, and not of restrictions; grants made under peculiar circumstances, and for characteristic purposes. In this it differs from other constitutions. They are limitations or restrictions of that universal sovereignty or governmental omnipotence, which belongs to an independent state, and which makes the state, however organized, the irresponsible master of the life, liberty, property, and conduct of the individual, except so far as the state has voluntarily limited its power.⁵

§ 24. Of this latter class, were the constitutions of the individual states, before the Federal Constitution was formed. The American Revolution commenced in rebellions of separate colonies bounded on the great common highways of national intercourse. For a common purpose, they consulted and combined together and, in 1776, declared themselves "free and independent states. They then separately, as members of a confederate nation, each in

³ *The State of Rhode Island v. The State of Massachusetts*, 12 Pet. Rep. 723, and cases cited.

⁴ *McCulloch v. The State of Maryland*, 4 Wheat. 316; Const. Preamble, id. Art. 4, § 3.

⁵ *The State of Rhode Island v. The State of Massachusetts*, 12 Pet. Rep. 720; *The U. S. v. Hudson*, 7 Cranch, 33; *Livingston v. Van Ingen*, 9 Johns, 574; *Martin v. Hunter's Lessee*, 1 Wheat. 304.

its own manner, adopted forms of state government, under which, as separate states, they had all the functions of good government, subject to the limitations and grants of the national confederation, which unified their nationality. The prerogatives of the Crown and the transcendent power of Parliament, all elemental and ultimate national supremacy, devolved upon the states and the people thereof, in a plenitude unimpaired by any act, and controllable by no authority. Each state was in itself, and as to its own powers, an independent government, and foreign to the other states of the union, as well as to other nations. It was competent for the people of the states, thus to create, by common consent, a general government, and to invest it with all the powers which they might deem proper and necessary; to extend or restrain those powers according to their own good pleasure; and to give them a permanent and supreme authority.*

§ 25. For mutual aid, these states, in 1777, formed articles of perpetual union of feeble character, known as the Articles of Confederation, limiting the powers of the states. And finally, in 1789, to form a more perfect union, and especially to establish justice, the present "Government of the United States" was formed by the Constitution of the United States, and to it was granted, by that instrument, a portion only of the powers previously existing in the states and the people thereof. It had been a "league:" it was made a "government." It was a government made by taking from the states, and the people thereof, and transferring to the United States, and the people thereof, certain portions of sovereignty.*

It took from the states all their powers of national sovereignty: "No state shall enter into any treaty, alliance, or confederation;" "No state shall grant letters of marque and reprisal;" "No state shall coin money;" "No state shall emit bills of credit;" "No state shall make anything but gold and silver a tender in payment of debts;" "No state shall pass any bill of attainder;" "No state shall pass any *ex post facto* law;" "No state shall pass any law impairing

* *Martin v. Hunter's Lessee*, 1 Wheat. 324, 325; *Livingston v. Van Ingen*, 9 Johns, 575.

* *The State of Rhode Island, v. The State of Massachusetts*, 12 Pet. Rep. 720; *The U. S. v. Hudson*, 7 Cranch, 33.

the obligation of contracts;" "No state shall grant any title of nobility;" "No state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws;" "No state shall, without the consent of Congress, lay any duty of tonnage," "nor keep troops or ships of war in time of peace," "nor enter into any agreement or compact with another state, or with a foreign power." All these are characteristic, elemental rights of sovereignty: without all of them, no state can properly be called sovereign, and yet no state of this union has one of them. All these, with many other great powers of national sovereignty, of which it is necessary to specify here only "the power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes," and the judicial power, embracing "all cases of admiralty and maritime jurisdiction," are granted to the United States.

§ 26. Some of these grants convey elemental powers of government in all their fulness and force, while others are conveyed in a modified and restricted form. They were grants by governments already organized, and possessing and actually exercising, sovereignty, unlimited, except by the few restrictions of their articles of perpetual union. They were made by the "People of the United States," but not by the people as a primary and unorganized mass solely, but by the people already formed into regular communities, and acting through or under their established constitutions; they were thus direct grants by the people, of those primitive powers, which, on the theory of our government, are supposed to emanate from the people, and they were also grants, by established popular governments, of powers constituting a part of their own acknowledged functions; and while they were the act of the constituted authorities, in the name of the people, they were also ratified by the people as the ultimate source of political power. They are therefore, all of them, to their proper extent, and for the accomplishment of their proper purpose, of the most uncontrollable and irresistible character, and they are without any limit, except such as is prescribed by the constitution itself. Thus, the power of peace and war, of international negotiation, of coinage, the judicial power over all cases affecting ambassadors, and over all cases of admiralty

and maritime jurisdiction, and others, are transferred to the general government, free from all restriction and limitation.⁷

§ 27. All the powers in the constitution were conferred upon the general government for purposes expressed in the constitution, in view of which purposes they are respectively to be construed. The constitution was made *by the people of the United States* "*to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty, to them and their posterity.*" Its grand purpose was to *unify* the whole in the relations of internationality, and all its minor purposes were subordinate and ancillary to this. Its grants, therefore, consist of great classes of powers. Those powers which should especially regulate our intercourse with foreign nations and their subjects, with the states and their citizens, and those in the exercise of which we were ourselves to be emphatically one people, and to be clothed with equal rights, although in other and municipal respects, we were to remain members of different communities, were granted to the general government wholly and absolutely, in order that our intercourse with foreign powers might be so regulated as to make us one of the great family of nations, acknowledging the laws and respecting and adopting the usages which constitute the rule of international intercourse, and to prevent the separate states from making inconsistent and conflicting laws, and destroying the harmony which could alone make us, and keep us one nation, the United States.⁸

§ 28. This is especially evident in the constitutional grants of judicial power. They are not grants to this or that court of the United States. The constitution does nothing but draw the line between the cases which belong to the United States Government and those which belong to the state governments. It transfers from the states and the people of the states to the general govern-

⁷ *McCulloch v. The State of Maryland*, 4 Wheat. 316; Const. Art. 1, §§ 8, 10; id. Art. 3, § 2.

⁸ Const. Preamble, Art. 1, §§ 8, 9, 10; id. Art. 3, § 2, Art. 4; *Martin v. Hunter's Lessee*, 1 Wheat. 334, 335, 347, 348; *Story's Commentaries*, § 1672; *The Moses Taylor*, 4 Wall, 430.

ment, the judicial sovereignty in great national classes of cases, to be exercised, not necessarily by courts constituted like the British Admiralty, or the British courts of common law or equity, but by such courts, and in such manner as the Congress of the newly created government should provide. When the constitution was made, there were no courts of the United States of any sort, nor was it certain that there would be here (as there never has been) a purely admiralty court, but it was certain that in the multifarious transactions on the ocean, seas, lakes, and rivers, which were to be the highways of our intercourse and commerce, between the several states and the various nations of the world, questions might continually arise, where the law of nations and the law of maritime commerce—the maritime law of the world—ought to take the place of the numerous conflicting and changing rules which could not fail to result from the various legislation and adjudication of the states. In no manner could a uniform administration of that great branch of the law of nations, known as the general maritime law, be secured, except by the transfer of all cases of admiralty and maritime jurisdiction, to the cognizance of the national judiciary.*

§ 29. A fruitful source of error in relation to the government of the United States, is its supposed relation to the British government. The United States is sometimes said to be, and, in a limited historical sense, is, an offset from Great Britain, and most of the people of the colonies, at the time of the Revolution, were the descendants of British subjects. Many of the states are really shoots from the government of Great Britain, and, as such, were subject to the common law. It was, therefore, quite natural, that, in matters relating to the foundation and powers of our government, many would first look to the nation from which we had just been severed by a revolution, and whose language and literature were our own. Still, it is not to be forgotten, that our people were not homogeneous, but consisted of persons from all civilized nations. The English, Scotch, Irish, Welsh, Dutch, Swedes, and French, some by conquest and some by emigration, were mixed and united to make

the American Nation, and had all brought with them, to some extent, a knowledge of, and an attachment to, the institutions of their parent countries. The creation or incorporation of other states from other conquered or revolted colonies, with other laws and usages, was also contemplated."¹⁰

And in all these nations which had ships and commerce, as well as in England, causes of admiralty and maritime jurisdiction had always arisen, and such cases had been decided, in different nations, by courts of different names. In some nations, courts were expressly devoted to such cases under the name of Consular Courts, Tribunals of Commerce, Maritime Courts, and Courts of Admiralty. In others, as in England, cases of maritime jurisdiction were, in one form or another, entertained by all the courts of law and equity in the kingdom, and decided according to that system of maritime law which derives its force from the universal consent of commercial nations.

§ 30. These circumstances may not have been without their influence to induce the framers of our constitution to make, as they did, a new and original government. They did not in any manner address themselves to national prejudices or predilections, nor adopt, nor even allude to, any previously existing government, as a pattern or standard, nor re-enact any known code of laws, in whole or in part; but they passed by in silence the institutions of the whole world, and invented a constitution and laws which had neither pattern nor prototype, in the actual and present state, or past history, of the human race. When, therefore, they created or granted a power, it was a grant of that power, not as it existed in one government or another, but a grant of the power in the abstract. It was a creation of the mere governmental function, to be exercised by the new government in its own prescribed manner, without any regard to the manner in which it had been exercised before or elsewhere."¹¹

§ 31. The government and laws of the United States, as estab-

¹⁰ Holmes' Annals, *passim*; Art. of Conf. Art. 11; Const. Art. 4, § 3.

¹¹ Mad. Pap. *passim*; Martin v. Hunter's Lessee, 1 Wheat. 331-2; The State of Rhode Island v. The State of Massachusetts, 12 Pet. 729, 730.

lished by and under the constitution, cannot, in any proper sense, be called an offshoot from those of Great Britain, nor have they any relation or similarity to them. . Our constitution was a new creation, made after the Revolution,—after twelve years of actual independence under the confederation,—and was derived, not from any parent state, but from ourselves, and nowhere else. The existence of such a state as Great Britain (to say nothing of her peculiar laws, courts, or institutions) is not even remotely hinted at in the constitution, or in the articles of confederation, and her institutions cannot, justly, be considered as in any manner the exponents of our own. Indeed, in the convention that formed the constitution, the institutions and example of Great Britain were, with singular consistency, referred to only that they might be avoided; and in the constitution itself, everything is studiously omitted, which might even recall to mind those institutions. The common law of England has never been by adoption, by inheritance, or by re-enactment, the law of the United States, although it has been of some of the states.”¹³

§ 32. Our constitution and laws are written in the English language, and, of course, to that language we must look for the proper meaning and force of their terms; and this is the only link that connects the laws and institutions of the general government with those of any other nation. When, therefore, the constitution or the laws make use of the words *equity*, *common law*, *admiralty*, *maritime law*, *civil law*, *trial by jury*, *felony*, &c., it is to the English law, and to English dictionaries, that we must resort for the meaning of those terms; but it by no means follows that we must look to the same source for the structure and jurisdiction of our national courts, or for the rules of decision which they are to follow. The force of a common language, even, added to that of our historical connection, was altogether too feeble, properly, to give to our new-made and original political institutions any transatlantic odor, much less to characterize them by strong English analogies.

¹³ The Amiable Nancy, 1 Paine, Rep. 117; Mad. Pap. *passim*; *post*, § 86; Wheaton v. Peters, 8 Pet. 591; The U. S. v. Hudson, 7 Cranch, 32; Manro v. Almeida, 10 Wheat. 473.

§ 33. In view of these considerations, it may be further observed that the grant in the constitution of admiralty and maritime jurisdiction is confined solely to the judicial power, properly so called. "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the congress may from time to time establish." — "The judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction." The admiral, in many countries, had numerous powers, duties, and rights, which sprang from and related to his military or naval character, and to his dignity and station as a high executive officer clothed with many of the prerogatives of royalty, and had no reference to his judicial character. He was a high naval commander, and nothing else; a commander-in-chief, subordinate only to the king; and some of his mere perquisites and privileges have been subjects of the jurisdiction of the admiralty court. All those portions of the power of the admiral, which may be properly called executive or administrative, are unknown to the American Admiralty. The trappings, perquisites, prerogatives, and *droits* of the admiralty are left to governments with which they are in harmony, and only a purely judicial function, to be exercised only in cases of maritime character, between party and party, by judges and courts, and not by the admiral nor his deputies, was thus granted to the United States, in the simplest and most comprehensive language. It provides for nothing but "*cases*" in courts."

§ 34. As it embraces nothing but cases, so it embraces *all* cases of admiralty and maritime jurisdiction: nothing can be more full, simple, clear, and unquestionable than the words of the grant, "*all cases*." It is subject to neither condition, exception, nor limitation."

§ 35. There are two classes of cases granted to the Federal Judiciary. In one, the nature of the case is everything, and the character of the parties nothing; in the other, the character of the parties is everything, and the nature of the case nothing, — a distinction springing naturally out of the purpose and character of the

¹³ *Ante*, § 21, *post*, §§ 34, 38, 39; *Cohens v. Virginia*, 6 Wheat. 264; *Chisholm v. Georgia*, 2 Dal. 419.

¹⁴ *Ante*, § 21.

constitution, to which allusion has already been made. "All cases affecting ambassadors and other public ministers and consuls;" "Controversies between citizens of different states," &c.: in these, everything depends upon the character of the parties. "All cases in law and equity arising under this constitution;" "All cases of admiralty and maritime jurisdiction:" in these, everything depends upon the nature of the case, the subject-matter of the suit, and nothing upon the character of the party."

§ 36. In none of these cases does the jurisdiction depend upon the question what British court, or what court of any other country, had jurisdiction of the case; and as jurisdiction in cases in law and equity, depends simply on the question, whether they arise under the constitution and laws of the United States, so jurisdiction in cases of admiralty and maritime jurisdiction, depends upon the admiralty or maritime nature of the case, and in no manner upon the question, whether in England the cause would be heard in the High Court of Admiralty, the Court of King's Bench, the Court of Exchequer, or the Court of Chancery, with or without a jury.

§ 37. We are not at liberty to say that in an instrument so well considered and so carefully drawn, any words are not significant; much less can we reject such a word as *all*, or deprive it of its proper significance. It cannot be construed to mean a small, unspecified and debatable portion. Nor can we add a condition or limitation to it. All cases of law and equity *arising under this constitution*, &c., all cases *between citizens*, &c., all cases *affecting ambassadors*, &c. In these clauses, limitations are carefully inserted, and as cautiously they are omitted in the one under consideration. It would have been easy to say "all cases of which the Court of King's Bench in England shall permit the English High Court of Admiralty, from time to time, to take jurisdiction," if it had been intended to leave a portion of our legislative and judicial power to be exercised or regulated in Great Britain through all time."

¹⁵ *Ante*, §§ 26, 27, 28; *Cohens v. Virginia*, 6 Wheat. 264.

¹⁶ *Ante*, § 21; *Waring v. Clarke*, 5 How. 457.

CHAPTER IV.

ADMIRALTY AND MARITIME LAW.

§ 38. THE word *admiralty*, in the constitution, cannot be deprived of any of its proper force.¹ The word is of frequent use in the maritime systems of many countries, and refers especially to that class of cases which originally came within the proper cognizance of the admiral. It is not necessary here to repeat the ingenious and fanciful etymologies of the word, nor even the more sound and rational ones. It is sufficient to say, that they are but so many modes of showing the relation between the title of the officer and his duties. Godolphin devotes the first chapter of his View of his Admiral Jurisdiction to "the etymon or true original of the word, with the various appellations thereof," in which, and the authorities there cited, the curious will find all they desire.*

§ 39. Every maritime nation has certain rules or laws in relation to ships, shipping, and maritime matters, which are peculiar to itself; such as its navigation acts; the municipal regulations of its harbors, creeks, and bays, and navigable rivers, and of its own vessels; its rules in relation to drowned persons, wrecks, obstructions in rivers, prohibited nets, royal fisheries, and other *droits* of the admiralty, constituting its maritime police. These were originally enforced by the admiral, exercising in part a high executive and administrative function, which was a portion of the royal prerogative, and was, in substance, confined to the waters and the vessels of his own nation. The admiralty court was the forum, through which, and by the aid of whose process, when necessary, these local municipal and administrative laws were enforced, and their violators punished. These are, properly, the admiralty

¹ *Ante*, § 21.

* Godolphin, chap 1.

law of any country. Cases arising under these laws, are cases of purely admiralty jurisdiction. Each nation has its own system of admiralty law, which it changes and modifies at pleasure. It has been remarked, that the mere executive functions of the admiral, his prerogatives and perquisites, have no existence here.*

§ 40. The word *maritime* is also to have its appropriate meaning—relating to the sea. The words *admiralty* and *maritime*, as they are used in the constitution and acts of Congress, are by no means synonymous, although able lawyers, on the bench, as well as at the bar, seem sometimes to have so considered them. They were evidently both inserted to preclude a narrower construction, which might be given to either word, had it been used alone.⁴ The English Admiralty had jurisdiction of all cases arising beyond sea, although not maritime in their character. These are excluded by the use of both terms.

§ 41. Maritime cases are more properly those arising under the maritime law, which is not the law of a particular country, and does not rest for its character or authority, on the peculiar institutions and local customs of any particular country, but consists of certain principles of equity and usages of trade, which general convenience and a common sense of justice have established in all the commercial countries of the world to regulate the dealings and intercourse of merchants and mariners, in matters relating to the sea.⁵

§ 42. This maritime law does not in the least depend upon the court in which it is to be administered, but furnishes the proper rule of decision in cases to which it applies, no matter in what

* *Ante*, §§ 3, 4; *post*, § 43; Laws of Oleron, 35-47; Laws of Hanse Towns, Art. 1; Mar. Ord. Fran. Lib. 1, *passim*; Nav. and Rev. Laws U. S.; Pardessus Loix. Mar. *passim*; Godolphin, 43; Zouch, 1-28; Sea Laws, 51, 54.

⁴ Jud. Act, § 9; *Martin v. Hunter's Lessee*, 1 Wheat. 304, 335; *Cohens v. Virginia*, 6, id. 264; *Thackarey v. The Farmer*, Gilp. 528; *The State of Rhode Island v. The State of Massachusetts*, 12 Pet. 744; *ante*, § 21.

⁵ 8 Kent Com. 3 edit. 1; Laws of Oleron, Art. 14, 15; Laws of Wisbuy, Art. 26, 27; Marine Ord. of France; Roccus, Introd.; Pardessus Loix. Mar.; 2 Valin. 177, 188; Rhod. Law, 36; Consulat, 18; Godolp. 43, 155; Zouch, Ass. 9; Sea Laws, *passim*; Malynes, 110; Zouch, Ass. 6; *post*, §§ 329, 358.

court they may be brought; and it has, in fact, been administered in different countries, in different courts, each constituted in its own manner; some called Admiralty Courts, some Maritime Courts, some Consular Courts, some Tribunals of Commerce. In England, the Court of Admiralty, and the Court of Chancery, especially enforced it, while truth was required in pleading; but when, by the use of a fictitious venue, the facts might be laid as occurring in London, the King's Bench took jurisdiction and prohibited the Admiralty; and thus, in the King's Bench more than in the Court of Admiralty, and especially under Lord Mansfield, the maritime law was built up and extended. In like manner, that large portion of the admiralty law which relates to the royal revenue, is, in England, administered in the Court of Exchequer, instead of the Court of Admiralty.*

§ 43. The jurisdiction of the admiral, and the administration of the admiralty law proper—the local maritime law—as it became a judicial function, has thus passed into the hands of the courts, and they now administer the admiralty law and the maritime law, both of which are sometimes called the admiralty law, sometimes the maritime law, and sometimes the admiralty and maritime law; and cases arising under them are cases of admiralty and maritime jurisdiction.'

§ 44. In different maritime nations, these two,—the local admiralty law and the general admiralty law,—have been codified and are found united in the maritime codes and ordinances which those nations have compiled or enacted, and which will be further noticed in future pages of this work, when the actual maritime law as administered in the civilized nations of the world, will be more particularly the subject of inquiry.

§ 45. In endeavoring further to ascertain what the framers of

* Spen. Eq. Juris.; *The King v. Carew*, 1 Vern. 54; *Mecleanham v. Foliam*, Gilb. Cases, 9; *Glascott v. Lang*, 3 Myl. & Craig, 454; S. C. 2 Jur. 909; *Duncan v. McCalmont*, 3 Beav. 409.

' *Ante*, § 4; Hall Ad. Introd. 11; *Erskine's Laws of Scot.* 32; *De Lovio v. Boit*, 2 Gall. Rep. 398.

the constitution meant by the words *admiralty* and *maritime*, it is important to inquire more especially into the admiralty and maritime systems of England, of Scotland, of the British American Colonies, of the American States under the Confederation, and of France, which the framers of the constitution may have had in mind. At the time when the constitution was formed, English, Scotch, American, and French commercial enterprise controlled most of the maritime commerce of the world; and such was our relation to them all, that the great men who were laying the foundations of our government, while they did not adopt in detail the institutions of any people, cannot be presumed, in so important a matter, to have been ignorant of, or to have overlooked the maritime courts of either of those jurisdictions, and they must have been, in some sort, historically acquainted with them all.

CHAPTER V.

THE ENGLISH ADMIRALTY.

THE ANCIENT JURISDICTION OF THE ENGLISH ADMIRALTY.

§ 46. THE jurisdiction of the English Admiralty, as actually exercised in its earliest days, and for centuries afterwards, was most extended, various, and ample, embracing all maritime causes of action, civil and criminal, of contract and of tort, and all causes of action arising on sea or beyond sea in foreign countries.¹ In bringing together the proofs of this proposition,—which, perhaps, many will consider sufficiently evident without formal proof,—the hazard of being considered prolix and commonplace, will not deter me from entering at length into the subject, and spreading before the reader the more important documents relating to it.

§ 47. There are no statutes granting jurisdiction to the Admiralty and other superior courts in England. The Chancery, King's Bench, Common Pleas, Exchequer, and Admiralty, are all, in theory, branches of the royal prerogative. It is, therefore, in the acts and records of prerogative, in the commissions and ordinances of the monarch, that we are to look for the grants of jurisdiction, and the proper evidence of its legitimate extent, except when they are limited by statute.

§ 48. The commission of the Admiral of England, by the ancient and the later patents, conferred a most ample jurisdiction, in the most unequivocal terms. It was as follows: "*Damus et concedimus, &c.* We give and grant to N. the office of our great Admiral of England, Ireland, and Wales, and the dominions and islands

¹ The *Emulous*, 1 Gal. 574; *De Lovio v. Boit*, 2 Gal. 398; The *Little Joe*, *Stewart's Ad. R.* 396.

belonging to the same, also of our town of Calais and our marches thereof, Normandie, Gascoigne, and Aquitaine; and we make, appoint and ordain him our Admiral, &c., with all privileges, jurisdictions, &c., and power in civil causes, *ad cognoscendum de placitu*, to hold conusance of *pleas, debts, bills of exchange, policies of insurance, accounts, charter parties, contractions, bills of lading, and all other contracts which any ways concern moneys due for freight of ships hired and let to hire, moneys lent to be paid beyond the seas at the hazard of the lender, and also of any cause, business, or injury whatsoever, had or done in, or upon, or through the seas, or public rivers, or fresh waters, streams, and havens and places subject to overflowing, whatsoever, within the flowing and ebbing of the sea, upon the shores or banks whatsoever adjoining to them or either of them, from any the said first bridges whatsoever, towards the sea, throughout our kingdom of England and Ireland, or our dominions aforesaid, or elsewhere beyond the seas, or in any parts beyond the seas whatsoever,*" &c.²

§ 49. All the patents of the office of Lord High Admiral, from the beginning of Queen Mary's time (1553) to the time of Charles II., are said by Zouch to have been conceived after one and the same form and tenor; and from his declaration and that of Selden, and from the commissions to the colonial vice-admirals and judges, hereafter set forth, which are said by Judge Story to be copied from them, I presume that, in the matter of judicial jurisdiction, the whole series of commissions, for many centuries, has conferred the same ample powers which will be found to be fully sustained by the other solemn royal acts relating to the same subject.³

§ 50. By the commission of Oyer and Terminer, also granted to the admiral, according to stat. 28, Henry VIII., cap. 15, power is granted to hear and determine "Of all and singular treasons, robberies, murders, &c., as well in and upon the sea, as any river, port, or fresh-water creek, or place whatever within the flowing of the sea to the full, beneath the first bridges towards the sea, or upon the shore of the sea, or elsewhere within the King's maritime juris-

² Zouch, Ass. 2; Selden, lib. 2. chap. 16; The Little Joe, Stewart's Ad. R. 894.

³ Waring v. Clarke. 5 How. 454.

diction of the admiralty of the realm, &c., as well against the peace and the laws of the land, as against the King's laws, statutes, and ordinances of the King's Court of Admiralty; and also touching *all and singular other matters which concern merchants and proprietors of ships, masters, shipmen, mariners, shipwrights, fishermen, workmen, laborers, sailors, scavengers, or any others.*"⁴

§ 51. The judgments or laws of Oleron, made by King Richard I., on his return from the Holy Land, in the latter part of the twelfth century (according to English judicial histories),⁵ are among the earliest records of prerogative legislation on the subject of which we have any proper evidence. That monarch is said to have remained some time in the Island of Oleron, then a part of his dominions, and to have pronounced the judgments, as they are called, of Oleron. They seem to be of the nature of the rescripts of the Roman Emperors, and, being collected together, have now existed as a code of maritime law, for nearly seven hundred years, as respectable for its universal authority, justice, and equity, as venerable for its high antiquity. This code is accessible to all, and will only be referred to here as embracing, in the most obvious construction of its sententious judgments, almost all the variety of maritime contracts, offences, and liabilities, occurring as well in ports, in harbors, and on the coasts, as on the open sea.

In the time of Henry VIII. they were published as "The judgment of the sea of Masters, of Mariners, and Merchants, and all their doings;" which is but a literal translation of the earlier French title of the same code. Later English publications entitle them "The Naval Laws of Oleron, instituted by Richard I., King of England, on his return from the Holy Land, in the end of the eleventh century, for the better regulation of *merchants, owners, and masters of ships, and mariners, and all seafaring persons, in maritime affairs.*"⁶

⁴ Zouch, Ass. 2.

⁵ I am not ignorant that Pardessus has clearly shown, that the laws of Oleron were not the production of Richard I.; but as affecting the question under consideration, the English view of their origin is alone important; and the ablest English writers, including the learned Selden, have claimed them as the production of that monarch.

⁶ Cleirac, 7; Pet. Ad. R. App; Zouch, Ass. 3; 1 Pardessus, 320; Prynne, 107; Mieghe's Sea Laws, 8; Godolph. 163; Sea Laws, 120.

§ 52. Zouch thus classifies their provisions in a very general manner:—

“1. Touching ships hired for sea voyages, and their proceedings in the same.

“2. Touching the safe keeping and delivery of goods received into ships.

“3. Touching the engaging (selling or hypothecating) of ships or goods, in case of necessity.

“4. Touching contributions to be made for loss, upon occasion of common danger.

“5. Touching damages done by or betwixt several ships.

“6. Touching the charge for hiring pilots, and their duty.”

Under each of these classes he gives several specifications, and there are many matters of which he makes no mention, including mariners' wages.¹

§ 53. The Black Book of the Admiralty is an ancient book or register of admiralty laws, decisions, ordinances, and proceedings and acts of the King, the Admiral, and the Court of Admiralty, of England, from the earliest periods. It is not known with certainty when, or by whom, it was collected or compiled. It is of an ancient hand apparently, not written all at once, nor by one person, but the first part in the reign of Edward III., or Richard II., and the latter part in the reigns of Henry IV., Henry V., and Henry VI., long before the angry controversies between the common law courts and the Court of Admiralty. It has been always considered by all writers on maritime law, as a book of very great authority, containing the ancient rules or statutes of the English Admiralty. Mr. Selden styles it, “*Vetusti Tribunalis Maritimi Commentarii*,” and “*Codex Manuscriptus de Admiraltatu*,” and says, there are in it constitutions touching the Admiralty of Henry I., Richard I., King John, and Edward I.²

§ 54. The records of the Black Book of the Admiralty make

¹ Zouch, Ass. 3.

² Zouch, Ass. 3; Prynn, 115; 2 Brow. Civ. & Ad. 42; Zouch, Ass. 1; Seld. Dom. Mar. b. 2, c. 28; De Lovio v Boit, 2 Gall. 398; Seld. Dom. Mar. b. 2, c. 28; Notes to Fortescue, cap. 32.

frequent reference to the laws of Oleron in maritime matters, and show clearly that they were the rule of decision in these early days. At that time, however, judicial as well as executive jurisdiction was a source of power and profit from the numerous forfeitures and other perquisites, and all courts were ingenious and grasping in their efforts to extend their power. The lords, in their liberties and franchises, by their bailiffs and other officers, encroached upon the proper jurisdiction of the admiral, and the subject was brought before the king and his council in the second year of Edward I., and the following ordinances were the result of that resort to royal prerogative. They are taken from the learned Prynne, who says he transcribed them from the Black Book of the Admiralty.*

§ 55. In the second year of Edward I., these two laws and ordinances were made and published by him and his lords at Hastings, registered in the Black Book of the Admiralty, page 29:—

“*Item.*—It is agreed at Hastings by the King Edward the first and his lords, that as many lords had divers franchises to hold pleas in parts, their seneschals and bailiffs shall hold *no plea if it touch merchant or mariner*, as well by deeds as by obligations or other deeds, whether the same amount to 20 or 40 shillings, and if any one shall be indicted for doing the contrary and shall be convicted, he shall have the same judgment as below provided.”

§ 56. “*Item.*—*Every contract made between merchant and merchant, or merchant and mariner, beyond sea, or within the flood mark, shall be tried before the Admiral, and not elsewhere, by the ordinance of the said King Edward and his lords.*”

To which this third was added:—

§ 57. “*Item.*—Those who are indicted because they hold before them hue and cry, or blood-shedding in salt water, or within the flood marks, if they are of this convicted, shall be imprisoned for two years, and afterwards shall be fined at the pleasure of the King and the Admiral.”¹⁰

* Prynne, *Animad.* 116; Prynne, *Animad.* 111.

¹⁰ Prynne, 111; Sir John Constable's Case, *Anderson Rep.* 89.

§ 58. The ordinances of Edward I. were the foundation of a consistent usage for a long period of time. The entries in the Black Book of the Admiralty, as quoted by Prynne, show clearly that the same usage prevailed in the time of Edward III. He quotes cases of prizes, mariners' wages, demurrage, freights from and to several ports, and marine torts, in which constant reference is made to the laws of Oleron, and the ordinances of Edward I., as the ancient law of the admiralty. He also quotes from the same book to the same effect, the inquisitions following:—¹¹

"Black Book of the Admiralty.

§ 59. "*Item.*—Let inquisition be made of all those who implead any merchants, mariners, or other men, at the common law, of any thing pertaining to the ancient marine law, and if any one is indicted and convicted, he shall pay a fine to the King for his improper suit and vexation, and shall besides withdraw his suit from the common law, and bring it before the Admiral's Court, if he will further prosecute it." Page 36.

"*Item.*—Let inquisition be made of those seneschals and bailiffs of lords having domains on the coasts of the sea, who hold a claim to hold any plea concerning merchants or mariners, exceeding 40 shillings sterling. . . . And this is the ordinance of Edward I. at Hastings in the second year of his reign."¹²

"*Et nota.*—That all contracts began and made inter merchant and merchant, beyond sea, or within the flow and reflow, commonly called flood mark, shall be tried and determined before the Admiral, and not elsewhere, by the aforesaid ordinance."¹³

§ 60. And in the forty-ninth year of Edward III. (A.D. 1376), the inquisition at Quinborough was taken by eighteen expert seamen, "men of knowledge and experience in maritime causes," before William Neville, Admiral of the North; Philip Courtney, Admiral of the West; and Lord Latimer, Lord of the Cinque Ports. The verdicts there given were desired to be established by the

¹¹ Prynne, Ad. 116, 119.

¹² Ante, § 55.

¹³ Black B. Ad. 142, 147. And see pp. 88, 58-63, 66-73; vide Prynne, 114-117; 4 Inst. 144.

king's letters patent in the Cinque Ports and towns adjoining to the Thames, to be observed by the owners, masters, and mariners of ships under penalties. They were enrolled amongst the records of the tower, for the government of the admiralty. They cover a very wide range of maritime causes of complaint and of actions. The heads of them are given by Zouch, and are as follows:—"

§ 61. "*Heads of the Articles of the Inquisition, taken at Quinn-borow in the year 1376, in the 49th of King Edward the Third, by eighteen expert seamen, before William Nevil, Admiral of the North, Philip Courtney, Admiral of the West, and the Lord Latimer, Warden of the Cinque Ports.*

"I. OFFENCES AGAINST THE KING AND KINGDOM.

"1. Of such as did furnish the enemy with victuals and ammunition, and of such as did traffic with the enemies without special licence.

"2. Of Traytors goods detained in ships and concealed from the King.

"3. Of Pirates, their receivers, maintainers and consorters.

"4. Of murders, manslaughters, maimes and petty felonies, committed in ships.

"5. Of ships arrested for king's service; breaking the arrest; and of sergeants of the admiralty, who for money discharge ships arrested for the king's service; and of mariners who having taken pay, run away from the king's service.

§ 62. "II. OFFENCES AGAINST THE PUBLIC GOOD OF THE KINGDOM.

"1. Of ships transporting gold and silver.

"2. Of carrying corn over sea without special licence.

"3. Of such as turn away merchandizes or victuals from the king's ports.

"4. Of forestallers, regrators, and of such as use false measures, balances, weights, within the jurisdiction of the admiralty.

"5. Of such as make spoil of wrecks, so that the owners, coming within a year and a day, cannot have their goods.

¹⁴ Zouch Ass. 1, 90; Malynes, cap. 17, 18; Hall Ad. Int. xix; Zouch, Ass. 3, 96.

"6. Of such as claim wrecks, having neither charter nor prescription.

"7. Of wears, riddles, blindstakes, water mills, &c., whereby ships and men have been lost or endangered.

"8. Of removing anchors, and cutting of buoy-ropes.

"9. Of such as take salmons at unreasonable times.

"10. Of such as spoil the breed of oysters, or drag for oysters and muscles at unreasonable times.

"11. Of such as fish with unlawful nets.

"12. Of taking royal fishes, viz., whales, sturgeons, porpoises, &c., and detaining one half from the king.

§ 63. "III. OFFENCES AGAINST THE ADMIRAL, THE NAVY, AND DISCIPLINE OF THE SEA.

"1. Of judges entertaining pleas of causes belonging to the admiral, and of such as in admiralty causes sue in the courts of common law, and of such as hinder the execution of the admiral's process.

"2. Of masters and mariners contemptuous to the admiral.

"3. Of the admiral's shares of waifs or derelicts, and of deodands belonging to the admiral.

"4. Of *Flotson*, *Jetson* and *Lagon*, belonging to the admiral.

"5. Of such as freight strangers' bottoms, where ships of the land may be had at reasonable rates.

"6. Of ship-wrights taking excessive wages.

"7. Of masters and mariners taking excessive wages.

"8. Of pilots, by whose ignorance ships have miscarried.

"9. Of mariners forsaking their ships.

"10. Of mariners rebellious and disobedient to their masters."

§ 64. Chief Justice Anderson also, in 1664, declares that, according to these ordinances of Edward I., which he sets forth, the admirals have used their authorities, to his time, for things done beyond the sea, and on the sea, and between high and low water mark, which proves that the space between high and low water mark is to be taken as a part of the sea, when the tide is in."

¹⁵ Sir John Constable's Case, Anderson Rep. 89.

§ 65. These ordinances of Edward I. and Edward III., appear to have so strengthened the Admiralty, that, in its turn, it encroached upon other jurisdictions, and usurped that which did not belong to it; and complaints were made to the King, not of the admirals exercising their ancient jurisdiction in all maritime matters, but that within the bodies of the counties of the nation they took jurisdiction of trespasses, house-breaking, carrying away goods on land, of the king's deodands and wrecks; of regulating the prices of provisions, the wages of labor, and other things of this sort, interfering with the every-day business of the common people on land. This produced the statute 13, Richard II., cap. 5, re-enacting the proper maritime law,' and the usage of the time of Edward III."

A.D. 1389.—13 Rich. II., cap. 5.

§ 66. "*Item.*—Forasmuch as a great and common clamor and complaint hath been oftentimes made before this time, and yet is, for that the Admirals and their deputies hold their sessions within divers places of this realm, as well within franchise as without, accroaching to them greater authority than belongeth to their office, in prejudice of our Lord the King, and the common law of the realm, and in diminishing of divers franchises, and in destruction and impoverishing of the common people, it is accorded and assented, that the Admirals and their deputies shall not meddle from henceforth of anything done within the realm, but only of a thing done upon the sea, as it hath been used in the time of the noble Prince, King Edward, grandfather of our Lord the King, that now is." "

§ 67. "*But only,*" is but another phrase for *unless* or *except*, and if either of those words had been used (the realm of England including all the British seas), there would hardly have been any dispute about the meaning of this act. The admiral "shall not meddle of any thing done within the realm, except of a thing done upon the sea, as it hath been used in the time of King Edward I.," was evidently intended only to enforce the ancient maritime juris-

¹⁶ Prynne, 83.

¹¹ 4 Evans' Stat. 271.

diction, and to cut off the new usurpations of the admirals on the land, and not on the water, to the prejudice of the king's perquisites, in diminishing the franchises of the lords, and impoverishing the common people, who were thus subject to double exactions.¹⁸

§ 68. Between high and low water was, on all hands, held to be the sea when the tide was in, and the Admiral, it seems, took occasion, from his admitted right over the sea and between high and low water mark, to extend it to the land when the tide was out, and to claim the valuable perquisites of wrecks, always a *droit* of the king and not of the admiralty, which were often on the land and the water, alternately as the tide ebbed and flowed, and to the dams and weirs in the small rivers and streams, and to the ponds; and in the franchises, liberties, cities, and boroughs within the bodies of the counties, as well on land as on water, they usurped the perquisites and privileges of the king and the lords.¹⁹

§ 69. Another statute was accordingly passed two years after the last, evidently intended to remedy this abuse, and to protect the common law jurisdiction in the bodies of the counties, that is, on the land, when the tide was out, and above high water mark, and in the tideless rivers, streams and ponds; as Chief Justice Anderson says, "the rivers which were in the counties," and to protect the king and the lords in their perquisites. It was in these words:—

A. D. 1391. — 15 Richard II., cap. 3.

§ 70. "*Item.*—At the great and grievous complaint of all the commons, made to our lord the King in this present parliament, for that the Admirals and their deputies do inroach to them divers jurisdictions, franchises, and many other profits, pertaining to our lord the King, and to other lords, cities and boroughs, other than they were wont, or ought to have of right, to the great oppres-

¹⁸ Prynne, 86.

¹⁹ Sir John Constable's Case, Anderson Rep. 89; *ante*, § 64; Sir Henry Constable's Case, Coke Rep. part 5, 106; Prynne, 116.

sion and impoverishment of all the commons of the land, and hindrance and loss of the King's profits, and of many other lords, cities and boroughs, through the realm: It is declared, ordained and established, that of all manner of contracts, pleas and quarrels, and all other things rising within the bodies of the counties, as well by land as by water, and also of wreck of the sea, the Admiral's Court shall have no manner of cognizance, power nor jurisdiction, but all such manner of contracts, pleas and quarrels, and all other things rising within the bodies of counties, as well by land as by water as afore, and also wreck of the sea, shall be tried, determined, discussed and remedied by the laws of the land, and not before nor by the Admiral, nor his lieutenant in any wise; nevertheless of the death of a man, and of a mayhem, done in great ships, being and hovering in the main stream of great rivers, only beneath the bridges of the same rivers, nigh to the sea, and in none other places of the same rivers, the Admiral shall have cognizance, and also to arrest ships in the great flotes for the great voyages of the King and the realm, saving always to the King all manner of forfeitures and profits thereof coming, and he shall have also jurisdiction upon the said flotes, during the said voyages, only saving always to the lords, cities and boroughs, their liberties and franchises."²⁰

§ 71. This statute is not perfectly clear, and the obscurity arises apparently, from the use of the phrase, "within the *bodies of the counties*, as well by land as by water," which by the common law judges, in later times, has been considered as equivalent to "within the territorial limits of the counties." This can hardly be the proper force of the language, since all the counties of England bounded upon the seas, or the navigable rivers, include a large portion of the water within their territorial limits even beyond low water mark, and it has never been doubted that the counties extend at least to low water mark, no matter what may be the state of the tide; yet it seems to be equally well settled, that, at high water, the space between high water mark and low water mark, is not within the *body* of the county. That phrase, appar-

²⁰ 4 Evans' Stat. 271; Jackson v. The Magnolia, 20 How. 298.

ently, must be considered as applying only to the land and to such water (probably not navigable waters), as could not be considered as a part of the sea, or did not connect with it. Such seems to have been the opinion of Chief Justice Anderson, and of Lord Coke himself. The admiral's jurisdiction extended only to what was done in the water, including the water between high water mark and low water mark, in the ordinary and natural course of the sea. "Where the sea ebbs and flows, every thing done on the land when the sea is ebbed, shall be tried at the common law, for it is *then* parcel of the county, *infra corpus comitatus*." Below the low water mark, the admiral has the sole and absolute jurisdiction. Between the high water mark and the low water mark, the common law and the admiral have *divisum imperium*, interchangeably, as aforesaid, which seems to be proved by the statute 13 Rich. II., cap. 5, confirming the usage in Edwards I.'s time; and 15 Rich. II., cap. 3, not mentioning this well-known usage, does not take it away, but only new usurpations of things done in rivers which were in the counties. This is declared by the learned Prynne to be a most clear resolution of the thing in question, both in point of right, law, and usage, from 2 Edw. I., to his (Ch. Justice Anderson's) time, with his genuine interpretation of the statutes of 13 and 15 Rich. II. Indeed, by a familiar rule of construction, the statute 13 Rich. II., recognizing and establishing as law, the usage of the time of Edw. I., could not be held to be repealed by the statute 15 Rich. II., unless the act or the usage were expressly repealed or abrogated."

§ 72. This statute, however, though plainly not intended to limit the ancient jurisdiction of the Admiralty, but simply to secure to the king and the lords their perquisites, was, nevertheless, the means of making the admiralty subject to the same encroachments and usurpations which the statute was intended to prevent, and in the year 1400, the statute 2 Hen. IV., was passed. It was in these words:—

" Zouch, Ass. 5; Sir Henry Constable's Case, Coke's Rep. part 5, 106; Sir John Constable's Case, Anderson Rep. 89; Prynne, 111.

A. D. 1400. — 2 Henry, IV., cap. 11.

§ 73. "*Item.* — Whereas in the statute made at Westminster, in the 13th year of the Second King Richard, amongst other things it is contained that the Admirals and their deputies shall not intermeddle from thenceforth, of any thing done within the realm, but only of a thing done upon the sea, according as it hath been duly used in the time of the noble King Edward, grandfather to the said King Richard, our Lord the King willeth and granteth that the said statute be firmly holden and kept and put in execution."

This statute was obviously passed for the sole purpose of precluding the narrow construction which has sometimes been given to 13 Rich. II. in connection with 15 Rich. II."

" *Ante*, § 65, 66; 4 Evans' Stat. 272.

CHAPTER VI.

THE STRIFE BETWEEN THE COMMON LAW COURTS AND THE ADMIRALTY, IN THE 16TH AND 17TH CENTURIES.

§ 74. HITHERTO the strife between the two jurisdictions was a less hostile rivalry than at a later period, when the Admiralty Court was made the subject of much irrational jealousy and strong controversy. In the sixteenth and seventeenth centuries, the Admiralty suffered much from the violence of this jealousy. "Jealousy," says Edwards, "is perhaps a mild word to apply to the passion with which the superior courts took up this question, for there appears to have been more greediness than emulation at the bottom of it." "It was," says Prynne, "for more jurisdiction, for gain, not for the public good, but that one jurisdiction might swallow up the other." It is to be regretted that to no less illustrious a personage than Lord Coke, is to be ascribed the origin of this jealousy; and that being the case, it is not wonderful that others should, from subserviency to the opinion of so great a man, have followed in the same track, or even have gone beyond it. Matters raged so high, that a war was declared between the two courts. Prohibitions were hurled from Westminster Hall, and without much order; serving, therefore, more to irritate than to subdue the Admiralty Court, which, though powerless and without the means of attack, obstinately held out for its ancient and time-honored privileges."¹

§ 75. In 1575, in the reign of Elizabeth, before the controversy had assumed that angry character which it afterwards exhibited, the judges of the admiralty and the common law judges entered into an agreement on the subject of prohibitions. To this agreement, the Queen does not appear to have been a party, but it in-

¹ Edwards' *Ad. Juris*. 17; *Smart v. Wolff*, 3 T. R. 848.

directly had the effect to keep the peace between the two jurisdictions; for thereafter during the reign of Elizabeth, no prohibition appears to have been issued against the admiralty, except two or three, which are mentioned by Lord Coke in 4th Institutes. The agreement of 1575 is worthy of notice, as an evidence that the common law courts claimed a sort of legislative or prerogative power in matters of jurisdiction. They do not appear so much to be deciding principles and declaring the law, as granting requests, consenting to agreements, and making promises. It was indeed so: the law was on the side of the admiralty; the power was in the hands of the common law judges.*

The agreement of 1575 was as follows:—

“The Request of the Judge of the Admiralty to the Lord Chief Justice of her Majesty’s Bench and his Colleagues, and The Judges’ Agreement, the 7th of May, 1575.

“REQUEST.

§ 76. “That after judgment or sentence definitive given in the Court of the Admiralty, in any cause, and appeal made from the same to the High Court of Chancery; that it may please them to forbear granting of any writ of prohibition, either to the judge of the said court, or to Her Majesty’s delegates, at the suit of him, by whom such appeal shall be made, seeing by choice of remedy that way, in reason he ought to be contented therewith, and not to be relieved any other way.

“AGREEMENT.

“It is agreed by the Lord Chief Justice and his colleagues, that after sentence given by the delegates, no prohibition shall be granted; and yet if there be no sentence, if a prohibition be not sued within the next term following sentence in the Admiral Court, or within two terms next after, at the farthest, no prohibition shall pass to the delegates.

“REQUEST.

§ 77. “Also, that prohibitions be not granted hereafter upon bare suggestions or surmises, without summary examination and proof

* Hall’s Ad. Intro. x.; Prynne, 98; Edw. Ad. 21.

made thereof, wherein it may be lawful to the Judge of the Admiralty and the party defendant, by the favor of the court, to have counsel, and to plead for the stay thereof, if there shall appear cause.

“AGREEMENT.

“They have agreed. that the Judge of the Admiralty, and the party defendant shall have counsel in court, and plead the stay, if there may appear evident cause.

“REQUEST.

§ 78. “That the Judge of the Admiralty, according to such ancient order as hath been taken, 2 Ed. I., by the king and his council, and *according to the letters patents of the Lord Admiral* for the time being, and allowed of by other kings of this land ever since, and by custom, time out of memory of man, may have and enjoy the cognition of all contracts, and other things arising, as well beyond, as upon the sea, without any let, or prohibition.

“AGREEMENT.

“This is agreed upon by the said Lord Chief Justice and his colleagues.

“REQUEST.

§ 79. “That the said Judge may have and enjoy the knowledge and breach of charter parties made between masters of ships and merchants, for voyages to be made to the parts beyond the seas, and to be performed upon, and beyond the sea, according as it hath been accustomed, time out of mind, and according to the good meaning of the statute of 32 H. VIII. c. 14, though the same charter parties happen to be made within the Realm.

“AGREEMENT.

“This is likewise agreed upon, for things to be performed either upon, or beyond the seas, though the charter party be made upon the land, by the statute of 32 H. VIII. c. 14.

“REQUEST.

§ 80. “That writs of *corpus cum causa* be not directed to the said Judge in causes of the nature aforesaid; and if any happen to be directed, that it may please them to accept the return thereof,

with the cause, and not the body, as it hath always been accustomed.

“AGREEMENT.

“If any writ of this nature be directed in the causes before specified, they are content to return the bodies again to the Lord Admiral’s goal, upon certificate made of the cause to be such, or if it be for contempt, or disobedience done to the court in any such cause.”

§ 81. The admiralty jurisdiction, at that time, appears to have extended to all cases of freight, charter parties, bottomry, mariners’ wages, debts due to material, men for the building and repairing of ships, and, generally, to all maritime contracts. When, however, the Queen was dead, as well as most of those who were parties to the agreement, and reference was made to it, Lord Coke denied its authority, because, as he said, the paper from which it was read to him was not subscribed with the hand of any judge, and, on his own responsibility, he declared that the judges of the King’s Bench had never assented to it; and prohibitions were granted by him, more than ever before. The learned doctors of the admiralty, however, still endeavored to convince the higher powers that their jurisdiction had no temptation to encroachment; and that, without wishing to enlarge the limits of their courts, they were only actuated by a love of justice and respect for their native dignities; but their outcries were little listened to by their rapacious invaders. The practisers in the admiralty were not the only sufferers from this useless conflict. The merchants — the people — called loudly for a cessation of hostilities, and the Crown was appealed to in 1611, when the agreement of 1575 was read before the king, James I., as an agreement to which the judges of the common law and the admiralty were parties.* At that time a specification of grievances was submitted to the king by the Lord High Admiral, and the Judge of the Admiralty. His Majesty ordered Dr. Dunn, the Judge of the Admiralty, to arrange the matters of complaint in specific articles, and, it seems, to submit them to the common law judges, to be answered by them; and they are said, by Lord Coke, to have

* Edw. Ad. Juris. 20.

made the answers which he gives, and which breathe his imperious spirit. The irresolute James does not appear to have made any order in the premises, but to have allowed the agreement of 1575, and the Court of Admiralty, to defend themselves as they best could; and Lord Coke triumphed.⁴

This list of grievances is known as *Articuli Admiralitatis*. They are as follows, with the caption of Lord Coke:—

“Articuli Admiralitatis.

§ 82. “The complaint of the Lord Admiral of *England* to the Kings most Excellent Majesty, against the Judges of the Realm, concerning Prohibitions granted to the Court of the Admiralty, 11 *die Febr. ultimo die Terminii Hillarii, Anno 8 Jac. Regis*: The effect of which complaint was after by his Majesties commandment set down in Articles by Doctor *Dun*, Judge of the Admiralty; which are as followeth, with answers to the same by the Judges of the Realm: which they afterwards confirmed by three kinds of Authorities in Law. 1. By acts of Parliament. 2. By judgments and judicial proceedings; and lastly, by Book cases.”

“Certain Grievances, whereof the Lord Admiral and his Officers of the Admiralty do especially complain, and desire redress.

§ 83. “*1st Objection.*—That whereas the conusance of all contracts and other things done upon the sea, belongeth to the Admiral jurisdiction, the same are made triable at the common law, by supposing the same to have been done in Cheapside, or such places.

“*The Answer.*—By the laws of this realm the Court of the Admiral hath no conusance, power or jurisdiction of any manner of contract, plea or querele within any county of the realm, either upon the land or the water: but every such contract, plea or querele, and all other things rising within any county of the realm, either upon the land or the water, and also wreck of the sea ought to be tried, determined, discussed and remedied by the laws of the land, and not before, or by the Admiral nor his

⁴ Hall's Ad. Intro. x.; Prynne, 99; Edwards' Ad. 20; Hall's Ad. Intro. xxii.

⁵ Zouch, Intro.; 4 Inst. 184.

Lieutenant in any manner. So as it is not material whether the place be upon the water *infra fluxum and refluxum aquarum*: but whether it be upon any water within any county. Wherefore we acknowledge that of contracts, pleas and querels made upon the sea, or any part thereof which is not within any county (from whence no trial can be had by twelve men) the Admiral hath, and ought to have jurisdiction. And no precedent can be showed that any prohibition hath been granted for any contract, plea or querele concerning any marine cause made or done upon the sea, taking that only to be the sea wherein the Admiral hath jurisdiction, which is before by law described to be out of any county. See more of this matter in the answer to the sixth article.

§ 84. "*2d Objection.*" — When actions are brought in the Admiralty upon bargains and contracts, made beyond the seas, wherein the common law cannot administer justice, yet in these cases prohibitions are awarded against the Admiral Court.

"*The Answer.*" — Bargains or contracts made beyond the seas, wherein the common law cannot administer justice (which is the effect of this article), do belong to the constable and marshal: for the jurisdiction of the Admiral is wholly confined to the sea, which is out of any county. But if any indenture, bond or other specialty, or any contract be made beyond the sea, for doing of any act or payment of any money within this realm, or otherwise, wherein the common law can administer justice, and give ordinary remedy; in these cases neither the constable and marshal, nor the Court of the Admiralty hath any jurisdiction. And, therefore, when this Court of the Admiralty hath dealt therewith in derogation of the common law, we find that prohibitions have been granted, as by the law they ought.

§ 85. "*3d Objection.*" — Whereas, time out of mind, the Admiral Court hath used to take stipulations for appearance and performance of the acts and judgments of the same court: it is now affirmed by the judges of the common law that the Admiral Court is no Court of Record, and therefore not able to take

such stipulations: and hereupon prohibitions are granted to the utter overthrow of that jurisdiction.

“*The Answer.*—The Court of the Admiralty proceeding by the civil law is no Court of Record, and therefore cannot take any such recognizance as a Court of Record may do. And for taking of recognizances against the laws of the realm, we find that prohibitions have been granted, as by law they ought. And if an erroneous sentence be given in that court, no writ of error, but an appeal before certain delegates doth lie, as it appeareth by the statute of 8 Eliz. Reginae, cap. 5, which proveth that it is no Court of Record.

§ 86. “*4th Objection.*—That charter parties made only to be performed upon the seas, are daily withdrawn from that court by prohibitions.

“*The Answer.*—If the charter party be made within any city, port, town or county of this realm, although it be to be performed either upon the seas, or beyond the seas, yet is the same to be tried and determined by the ordinary course of the common law, and not in the Court of the Admiralty. And therefore when that court hath inroached upon the common law in that case, the Judge of the Admiralty and the party suing there have been prohibited, and oftentimes the party condemned in great and grievous damages by the laws of the realm.

§ 87. “*5th Objection.*—That the clause of *Non obstante statuto*, which hath foundation in his Majesty's Prerogative, and is current in all other grants, yet in the Lord Admiral's Patent is said to be of no force to warrant the determination of the causes committed to him in his Lordship's Patent, and so rejected by the judges of the common law.

“*The Answer.*—Without all question the statutes of 13 R. 2, cap. 3, 15 R. 2 cap. 5, and 2 H. 4, cap. 11, being statutes declaring the jurisdiction of the Court of the Admiral, and wherein all the subjects of the realm have interest, cannot be dispensed with by any *non obstante*, and therefore not worthy of any answer: but by colour thereof, the Court of the Admiralty hath, contrary to those Acts of Parliament, inroached upon the juris-

diction of the common law, to the intolerable grievance of the subjects, which hath oftentimes urged them to complain in your Majesty's Courts of ordinary justice at Westminster, for their relief in that behalf.

§ 88. "6th Objection.—To the end that the Admiral Jurisdiction may receive all manner of impeachment and interruption, the rivers beneath the first bridges,⁶ where it ebbeth and floweth, and the ports and creeks are by the judges of the common law, affirmed to be no part of the seas, nor within the Admiral Jurisdiction: and thereby prohibitions are usually awarded upon actions depending in that court, for contracts and other things done in those places; notwithstanding that by use and practice time out of mind, the Admiral Court have had jurisdiction within such ports, creek and rivers.

"*The Answer.*—The like answer as to the first. And it is further added, that for the death of a man, and of mayhem (in those two cases only) done in great ships, being and hovering in the main stream only beneath the points⁶ of the same rivers nigh to the sea, and no other place of the same rivers, nor in other causes, but in those two only, the Admiral hath cognizance. But for all contracts, pleas and querels made or done upon a river, haven, or creek, within any county of this realm, the Admiral without question, hath not any jurisdiction, for then he should hold plea of things done within the body of the county, which are triable by verdict of twelve men, and merely determinable by the common law, and not within the Court of the Admiralty, according to the civil law. For that were to change and alter the laws of the realm in those cases, and make those contracts, pleas and querels triable by the common laws of the realm, to be drawn *ad aliud examen*, and to be sentenced by the Judge of the Admiralty according to the civil laws. And how dangerous and penal it is for them to deal in these cases, it appeareth by judicial precedents of former ages. But see the answer to the first article.

⁶ *Pontes, pontibus*, bridges, it will be perceived, are translated by Lord Coke, *points*, meaning the headlands at the mouth of the rivers—a gross perversion of language.

§ 89. "7th Objection.—That the agreement made in Anno Domini, 1575, between the Judges of the Kings Bench and the Court of the Admiralty, for the more quiet and certain execution of Admiral Jurisdiction, is not observed as it ought to be.

"*The Answer.*—The supposed agreement mentioned in this article, hath not as yet been delivered unto us, but having heard the same read over before his Majesty (out of a paper not subscribed with the hand of any judge), we answer, that for so much thereof as differeth from these answers, it is against the laws and statutes of this realm; and therefore the Judges of the King's Bench never assented thereunto, as is pretended, neither doth the phrase thereof agree with the terms of the laws of the realm.

§ 90. "8th Objection.—Many other grievances there are, which, in discussing of these former, will easily appear worthy also of reformation.

"*The Answer.*—This article is so general, as no particular answer can be made thereunto, only that it appeareth by that which hath been said, that the Lord Admiral, his Officers and Ministers principally by colour of the said void *non obstante* and for want of learned advice, have unjustly incroached upon the common laws of this realm, whereof the marvail is the less, for that the Lord Admiral, his Lieutenants, Officers and Ministers have without all colour, incroached and intruded upon a right and prerogative due to the crown, in that they have seized and converted to their own uses, goods and chattels of infinite value, taken by pirates at sea, and other goods and chattels which in no sort appertain unto his lordship by his letters patents, wherein the said *non obstante* is contained, and for the which he and his Officers remain accountable unto his Majesty. And they, now wanting, in this blessed time of peace, causes appertaining to their natural jurisdiction, incroach upon the jurisdiction of the common law, lest they should sit idle and reap no profit. And if a greater number of prohibitions (as they affirm), have been granted since the great benefit of this happy peace, than before in time of hostility, it moveth from their own incroachments upon the jurisdiction of the common law. So as they do not only unjustly incroach, but com-

plain also of the Judges of the Realm for doing of justice in these cases."

§ 91. The common law judges seem to have met with no further check during the residue of the reign of James I., and the first seven years of the reign of Charles I. In that year, the Lord High Admiral and Sir Henry Martyn, the Judge of the Admiralty, brought the matter again before the king and lords of his council, before whom the matters between the Admiralty and the Judges were several times heard and debated at large; and at last these ensuing articles were drawn up, read, agreed, and resolved at the council board, by the king himself, and all the lords of his council, twenty-three in number, including Lord Keeper Coventry and Lord Privy Seal Montague, eminent lawyers, and signed by all the twelve judges of the common law courts, and by the "grand lawyer, Mr. William Noye, Attorney-General, a great professor and pillar of the common law," and by the Judge of the Admiralty, entered in the Council Table Register of Causes, and the original by his Majesty's command, kept in the Council chest.'

"At Whitehall, 18th of February, 1632.

Present :

The King's Most Excellent Majesty.

Lord Keeper,	Lord V. Wimbleton,
Lord Archb. of York,	Lord Vis. Wentworth,
Lord Treasurer,	Lord V. Faulkland,
Lord Privy Seal,	Lord Bishop of London,
Earl Marshall,	Lord Cottington,
Lord Chamberlain,	Lord Newburgh,
Earl of Dorset,	Mr. Treasurer,
Earle of Carlisle,	Mr. Comptroller,
Earl of Holland,	Mr. Vice Chamberlain,
Earl of Darby,	Mr. Secretary Coke,
Lord Chancellor of Scotland,	Mr. Secretary Windebanke.
Earl Morton.	

¹ Prynne, Ad. 100; Hall's Ad. Intro. xxiv.

§ 92. "This day his Majesty being present in Council, the articles and propositions following for the accommodating and settling of the differences concerning prohibitions, arising between his Majesty's Courts of Westminster, and his Court of Admiralty, were fully debated, and resolved by the Board. And were then likewise upon reading the same as well before the Judges of his Highness said Courts at Westminster as before the Judge of his said Court of Admiralty, and his Attorney-General, agreed unto and subsigned by them all in his Majesty's presence, and the transcript thereof ordered to be entered into the register of Council Causes and the original to remain in the Council chest.

§ 93. "1. If suit shall be commenced in the Court of Admiralty upon contracts made, or other things personally done beyond the seas, or upon the sea, no prohibition is to be awarded.

§ 94. "2. If suit before the Admiral for freight, or mariners' wages, or for the breach of charter parties for voyages to be made beyond the sea, though the charter parties happen to be made within the realm, and although the money be payable within the realm, so as the penalty be not demanded, a prohibition is not to be granted; but if suits be for the penalty, or if question be made whether the charter partie were made or not; or whether the plaintiff did release, or otherwise discharge the same within the realme, that is to be tried in the King's Courts at Westminster, and not in the King's Court of Admiralty, so that first it be denied upon oath, that a charter partie was made, or a denial upon oath tendered.

§ 95. "3. If suit shall be in the Court of Admiralty for building, amending, saving, or necessary victualling of a ship, against the ship itself, and not against any party by name, but such as for his interest makes himself a party, no prohibition is to be granted, though this be done within the realm.

§ 96. "4. Likewise the admiral may inquire of, and redresse all annoyances and obstructions in all navigable rivers, beneath the first bridges, that are any impediments to navigation, or passage to, and from the sea, and also try personal contracts and injuries done

there, which concern navigation upon the sea, and no prohibition is to be granted in such cases.

§ 97. "4. If any be imprisoned, and upon *habeas corpus*, if any of these be the cause of imprisonment, and that be so certified, the partie shall be remanded.

(Signed)

"THOMAS RICHARDSON,
RO. HEATH,
HUMPHRY DAVENPORT,
JOHN DENHAM,
RICH. HUTTON,
WILLIAM JONES,
GEORGE CROKE,

THO. TREVOR,
GEO. VERNON,
JAMES WESTON,
ROBERT BARKLEY,
FRAN. CRAWLEY,
HENRY MARTEN,
WILLIAM NOYE.

EX. T. MEAUTYS."

§ 98. I take these from Prynne, who was keeper of the records and had the means of securing the greatest accuracy, and who seems to have had them carefully examined and certified, and sets them out at length, in form, and with the signatures. They may be found in one form or another, published in many other places, but no two copies that I have seen, agree in all the important particulars, especially in the second and fourth paragraphs ;^o and it is not a little remarkable that, having been preserved by Sir George Croke (who himself signed them), and published in two editions of his reports, without criticism or comment, as evidence of the law, and referred to in the index,—word *Admiralty*,—in the third edition of those reports, after the death of Sir George Croke, and of most, if not all, the judges and councillors who signed them, they should have been, without reason or apology, omitted, and their place left blank on the page, while the original reference to them was allowed to stand in the index, and so remains in all subsequent editions of Croke, to this day. This very extraordinary mutilation of a book, then of high authority in the courts, tends to show that the common law jurists, who did not themselves actually perpetrate, were still willing to connive at, the falsification of documents and books, to accomplish a triumph originally attempted from unworthy motives, and pursued with persevering zeal, apparently,

^o Dunlap's Ad. Prac. 13; Zouch, Ass. 7; Godolph. 158.

from pride of opinion, or motives as discreditable as those in which the controversy had originated.*

§ 99. These articles were not liable to the objection that they were not signed, and for a number of years they kept the peace between the courts. The troubles, however, between the king and the parliament and his people soon commenced, and resulted in the overthrow of the royal authority and the establishment of the Protectorate. Little more is now known of the contest, except that it was probably renewed as soon as the check of royal authority was withdrawn. The republican parliament was then called upon by the friends of trade and commerce, to take sides with the admiralty, and to secure to the people the benefits of its more enlarged jurisdiction; and the ordinance of 1648 was the consequence.⁹ It was as follows:—

Extract from Scobell's Collection of the Acts and Ordinances of the Republican Government of England. Anno 1648, page 147.

“CHAPTER 112.

“The Jurisdiction of the Court of Admiralty settled.

§ 100. “The Lords and Commons assembled in Parliament, finding many inconveniences daily to arise, in relation both to the trade of this Kingdom, and the Commerce with foreign parts, through the uncertainty of jurisdiction in the trial of maritime causes do ordain and be it ordained by the authority of Parliament. That the Court of Admiralty shall have cognizance and jurisdiction against the ship or vessel, with the tackle, apparel and furniture thereof; in all causes which concern the repairing, victualling and furnishing provisions for the setting of such ships or vessels to sea; and in all cases of bottomry, and likewise in contracts made beyond the seas, concerning shipping, or navigation, or damages happening thereon, or arising at sea in any voyage; and likewise in all cases of charter parties, or contracts for freight, bills of lading, mariners' wages, or damages in goods laden on board ships,

⁹ Cro. Cor. Lond. 296, 1657, first edit. and 1671, second edit., and subsequent editions; Prymne, 100.

¹⁰ Hall's Ad. Intro. xxiv.

or other damages done by one ship or vessel to another, or by anchors, or want lying of buoys, except always that the said Court of Admiralty shall not hold pleas, or admit actions upon any bills of exchange, or accounts betwixt merchant and merchant, or their factors.

§ 101. "And be it ordained, That in all and every the matters aforesaid, the said Admiralty Court shall and may proceed and take recognizances in due form, and hear, examine, and finally end, decree, sentence and determine the same according to the laws and customs of the sea, and put the same decrees and sentences in execution, without any let, trouble or impeachment whatsoever, any law, statute or usage to the contrary heretofore made in any wise notwithstanding; saving always and reserving to all and every person and persons, that shall find or think themselves aggrieved by any sentence definitive, or decree having the force of a definitive sentence, or importing a damage not to be repaired by the definitive sentence given or interposed in the Court of Admiralty, in all or any of the cases aforesaid, their right of appeal in such form as hath heretofore been used from such decrees or sentences in the said Court of Admiralty.

§ 102 "Provided always, and be it further ordained by the authority aforesaid, that from henceforth there shall be three judges always appointed of the said court, to be nominated from time to time by both houses of Parliament, or such as they shall appoint; and that every of the judges of the said court for the time being, that shall be present at the giving of any definite sentence in the said Court, shall at the same time, or before such sentence given openly in Court, deliver his reasons in law of such his sentence, or of his opinion concerning the same; and shall also openly in Court give answers and solutions (as far as he may), to such laws, customs or other matter as shall have been brought or alleged in Court, on that part against whom such sentence or opinion shall be given or declared respectively.

"Provided also, That this Ordinance shall continue for three years, and no longer.

"Passed, the 12th April, 1648.

"Made perpetual by Ordinances of 2nd April, 1641. C. 3 — 1654. C. 21. and 1645. C. 10.

"Expired at the Restoration, anno 1660."

§ 103. Under this ordinance, the admiralty was administered till the Restoration by Dr. Godolphin, who had been one of the Judges of the Admiralty under Cromwell, and had written his View of the Admiral Jurisdiction. So great was his reputation for integrity and knowledge, that at the Restoration he was made King's Advocate, and he immediately published his work, in which the actual jurisdiction of the court is set forth as follows: —¹¹

§ 104. "Within the cognizance of this jurisdiction are all affairs that peculiarly concern the Lord High Admiral, or any of his officers *quatenus* such; all matters immediately relating to the navies of the kingdome, the vessels of trade, and the owners thereof, as such; all affairs relating to mariners, whether ship-officers or common mariners, their rights and privileges respectively; their office and duty; their wages; their offences, whether by wilfulness, casualty, ignorance, negligence, or insufficiency, with their punishments. Also all affairs of commanders at Sea, and their under-officers, with their respective duties, privileges, immunities, offences, and punishments.

§ 105. "In like manner all matters that concern owners and proprietors of ships, as such; and all Masters, Pilots, Steersmen, Boatswains, and other Ship-Officers; all Ship-wrights, Fishermen, Ferry-men, and the like; also all causes of seizures, and Captures made at Sea, whether *jure Belli Publici*, or *jure Belli Privati*, by way of Reprizals, or *jure nullo* by way of Piracy; Also all Charter parties, Cocquets, Bills of Lading, Sea-Commissions, Letters of safe Conduct, Factories, Invoyses, Skippers Rolls, Inventories, and other Ship-papers; Also all causes of Freight, Mariners wages, Load-manage, Port-charges, Pilotage, Anchorage, and the like.

¹¹ Hall's Ad. Intro. p. xxviii.

¹² Godolph. 43-48.

§ 106. "Also all causes of Maritime Contracts *indeed* or *as it were* Contracts, whether upon, or beyond the Seas; all causes of mony lent to Sea, or upon the Sea, called *Fœnus Nauticum Pecunia trajectitia, usura maritima, Bomarymony*, the Gross Adventure, and the like; all causes of pawning, hypothecating, or pledging of the ship itself, or any part thereof, or her Lading, or other things at Sea; all causes of *Jactus*, or casting goods over board; and Contributions, either for Redemption of Ship or Lading, in case of seizure by Enemies or Pyrats, or in case of goods damnified, or disburdening of ships, or other chances, with Average; also all causes of spoil and depredations at Sea, Robberies and Pyracies; also all causes of Naval Consort-ships, whether in War or Peace; Ensurance, Mandates, Procurations, Payments, Acceptations, Discharges, Loans or Oppignorations, Emptions, Venditions, Conventions, taking or letting to Freight, Exchanges, Partnership, Factoridge, Passage-money, and whatever is of Maritime nature, either by way of *Navigation* upon the Sea, or of *Negotiation* at or beyond the Sea in the way of Marine Trade and Commerce; also the Nautical Right which Maritime persons have in ships, their Apparel, Tackle, Furniture, Lading, and all things pertaining to Navigation; also all causes of Out-readers, or Out-riggers, Furnishers, Hirers, Freighters, Owners, Part-owners of ships, as such; also all causes of Priviledged ships, or Vessels in his Majesties Service or his Letters of *safe Conduct*; also all causes of shipwreck at Sea, Flotson, Jetson, Lagon, Waiffs, Deodands, Treasure-Trove, Fishes-Royal; with the Lord Admiral's shares, and the Finders respectively.

§ 107. "Also all causes touching Maritime offences or misdemeanours, such as cutting the Bouy-Rope or Cable, removal of an Anchor whereby any Vessel is moored, the breaking the Lord Admiral's Arrests, made either upon person, ship, or goods; Breaking Arrests on ships for the King's Service, being punishable with Confiscation by the Ordinance made at *Grimsby* in the time of *Rich. I.* Mariners absenting themselves from the King's Service after their being prest; Impleading upon a Maritime Contract, or in a Maritime Cause elsewhere than in the Admiralty,

contrary to the Ordinance made at *Hastings* by *Ed. I.*¹³ and contrary to the Laws and Customes of the Admiralty of *England*; Forestalling of Corn, Fish, &c. on ship-board, regrating and exaction of water-officers; the appropriating the benefit of Salt-waters to private use exclusively to others without his Majesties Licence; Kiddles, Wears, Blind stakes, Water mills, and the like, to the obstruction of Navigation in great Rivers; False weights or measures on ship-board; Concealing of goods found about the dead within the Admiral Jurisdiction, or of Flotsons, Jetsons, Lagons, Waiffs, Deodands, *Fishes Royal*, or other things wherein the Kings Majesty or his Lord Admiral have interest; Excessive wages claimed by Ship-wrights, Mariners, &c. Maintainers, Abettors, Receivers, Concealers or Comforters of Pyrats; Transporting Prohibited goods without Licence; Draggers of Oysters and Muscles at unseasonable times, *viz.* between May-day, and Holyrood-day; Destroyers of the brood or young Fry of Fish; such as claim Wreck to the prejudice of the King or Lord Admiral; such as unduly claim privileges in a Port; Disturbers of the Admiral Officers in execution of the Court-Decrees; Water-Bayliffs and Searchers, not doing their duty; Corruption in any of the Admiral-Court-Officers; Importers of unwholesome Victuals to the peoples prejudice; Freighters of strangers Vessels contrary to the Law; Transporters of prisoners, or other prohibited persons not having Letters of safe Conduct from the King, or his Lord Admiral; Casters of Ballasts into Ports or Harbours, to the prejudice thereof; Unskilful Pilots, whereby ship or man perish; Unlawful Nets, or other prohibited Engines for Fish; Disobeying of Embargos, or going to Sea contrary to the Prince his command, or against the Law; Furnishing the ships of Enemies, or the Enemy with ships; All prejudice done to the Banks of Navigable Rivers, or to Docks, Wharffs, Keys, or anything whereby Shipping may be endangered, Navigation obstructed, or Trade by Sea impeded; Also embezzlements of ship-tackle or furniture; all subtractions of Mariners wages; all defraudings of his Majesties Customes, or other Duties at Sea; also all prejudices done to, or by passengers a shipboard; and all damages done by one ship or Vessel to another; also to go

¹³ *Ante*, §§. 55, 56, 57.

to Sea in tempestuous weather, to sail in devious places, or among Enemies, Pyrats, Rocks, or other dangerous places, being not necessitated thereto; all clandestine attempts by making privy Cork-holes in the Vessels, or otherwise, with intent to destroy or endanger the ship; also the shewing of false Lights by Night either on shore, or in Fishing Vessels, or the like, on purpose to intice Sailers, to the hazard of their Vessels; all wilful or purposed entertaining of unskilful Masters, Pilots or Mariners, or sailing without a Pilot, or in Leaky and insufficient Vessels; also the over-burdening the ship above her birth-mark, and all ill stowage of goods a shipboard; also all Importation of *Contrabanda* goods, or Exportation of goods to prohibited Ports, or the places not designed; together with very many other things relating either to the state or condition of persons Maritime, their rights, their duties, or their defaults.”¹⁴

§ 108. This ordinance ceased to be in force at the Restoration, and the common law judges again prohibited the admiralty. The merchants petitioned for a reobservance of the rules of 1632; but neither their petitions, nor Judge Godolphin’s arguments and learning, were regarded; and the civilians, tired of the struggle, appear to have preferred a peace, however disadvantageous, to war, however justly it might be carried on. The violent opinions, first expressed by Lord Coke, and afterwards supported by others with more subserviency than reason, could not be resisted, and the admiralty submitted. It is well remarked by Edwards: “Although so much of the ancient authority of the Admiralty Court has been rendered nugatory in this nineteenth century, that court may look back with pride and observe how well it has survived the conflict;—how the arguments which were put forth with force, by those learned civilians in the sixteenth and seventeenth centuries appear, at last, to be listened to; for now the rule of *locality*, to which it was attempted to confine the jurisdiction of the admiralty, has almost entirely given way to the more rational one of the *subject-matter* to be adjudicated upon.” The wants of commerce, in this commercial age, have become too imperious

¹⁴ Godolph. Ad. Juris, 43 to 48.

to be disregarded; and even in England, in the stat. 3 and 4 Vic. c. 65, a great step has been taken towards restoring to the High Court of Admiralty those cases of admiralty and maritime jurisdiction of which the common law courts had deprived them.¹⁵

§ 109. The commissions to the vice-admirals, issued from the Lord High Admiral, and to the vice-admiralty courts, issued from the High Court of Admiralty, during the next hundred years, while they furnish evidence of the extent of the jurisdiction of the courts to which they were issued, and also evidence of the jurisdiction of the High Court of Admiralty from which they issued, show that, wherever prohibitions could not reach the Admiralty, there its ancient plenary and beneficial jurisdiction was deputed and exercised, originally and on appeal, without restraint.¹⁶

§ 110. While it is thus clear that the ancient jurisdiction of the English Admiralty was of a most extended and beneficial character, embracing all maritime causes of action, it is equally true, that by prohibitions on most inconsistent and extraordinary grounds, "granted," as Prynne says, "on sudden motions without solemn argument," the exercise of that jurisdiction was from time to time restrained by the King's Bench within very narrow limits. The mode and character of the opposition to that jurisdiction, I have not treated in detail. The curious inquirer will find all that he can desire on this subject in the great case of *De Lovio v. Boit*, 2 Gallison, 398, and the works and cases there quoted, and referred to and examined by Judge Story, with an affluence of learning and a wisdom and acuteness of criticism, which, in that early period in his judicial career, promised for him that fame, which, afterwards, equalled his highest hopes, and shed a permanent lustre on the judicial history of the nation.

¹⁵ Hall Ad. Intro. xi; 2 Brown Civ. and Ad. Law, 78; *The Ocean*, 2 W. Rob. 368; "It was deemed expedient to restore the ancient jurisdiction of the Court of Admiralty."—*Dr. Lushington*, p. 371.

¹⁶ *Vide* Those commissions; *post*, §§ 118–160.

CHAPTER VII.

THE ENGLISH ADMIRALTY AT THE TIME OF THE AMERICAN REVOLUTION.

§ 111. It has been remarked, that our situation as British colonies, previous to the Revolution, and the adoption of the English common law, as interpreted in the English books, did much to influence opinion in this country, in favor of the narrow English rule of admiralty jurisdiction which prevailed at that time. That that narrow platform of jurisdiction was only what remained after centuries of strife between the courts of common law and the Court of Admiralty had resulted in confining the admiralty to the following very inconsiderable class of cases:—

To enforce judgments of foreign courts of admiralty, where the person or the goods are within the reach of the court;

Mariners' wages, where the contract is not under seal, and is made in the usual form;

Bottomry, in certain cases and under many restrictions;

Salvage, where the property was not cast on shore;

Cases between part owners disputing about the employment of the ship;

Collisions and injuries to property or persons on the high seas;

Droits of the admiralty.¹

This was all that was left of that large jurisdiction which it had before rightfully exercised for centuries.

It is not easy to perceive any satisfactory reason why these few causes of action alone (having no peculiar odor of nationality), should be deemed of so much importance, as to be withdrawn from the judicial power of the states, and made the subject of a constitutional grant to the national government. Indeed it would

¹ *Waring v. Clarke*, 5 Howard, 452-3; 3 Black. Com. 106.

seem more like puerile caprice, than that ripe wisdom which we habitually look for in the fathers of the republic.

§ 112. The struggle between these courts originated in the same spirit that attempted to break down the whole system of equity; and none can deny that the courts of common law manifested a great degree of jealousy and hostility, fostered by strong prejudice, and a very imperfect knowledge of the subject. The English Admiralty has always rightfully had jurisdiction over all maritime contracts; and the decisions of the courts of common law, prohibiting its exercise, are neither consistent in themselves nor reconcilable with principle. In those days, when might was right, in courts as well as camps, and jealousy, prejudice, and arrogance, to say nothing of the love of gain, influenced the judicial decisions of judges, had the common law courts had the power to issue writs of prohibition to the Chancellor, and had that high officer been anything less than the highest judicial functionary, and the first subject in the realm, the Court of Chancery would have met the fate of the Court of Admiralty, and would have been stripped of the most useful portion of its jurisdiction.²

§ 113. The Court of King's Bench has power to issue prohibitions, but it has no power to extend or diminish the jurisdiction of the admiralty. That jurisdiction is conferred by the king's prerogative and royal commission, or by statute, or immemorial usage, and not otherwise, and can be limited only in the same manner. If the king's commission, or the proper exercise of the royal prerogative, or a statute, give the jurisdiction, the King's Bench cannot deprive the court of its jurisdiction, that is to say, of its right to take cognizance of causes, although by an improper exercise of irresponsible power, it can prevent the admiralty from exercising the jurisdiction which properly belongs to it. The right of the admiralty depends upon the construction of the grant of jurisdiction alone, no matter how often or for what causes, prohibitions may have been issued. The Court of King's Bench has neither legislative nor executive powers which enable it rightfully to dispense

² The Jerusalem, 2 Gall. 348.

with the law, whether that law be founded in parliamentary or prerogative legislation.

If at the time of the American Revolution, and before the adoption of the Constitution of the United States, the King's Bench had determined to carry out, to their legitimate extent, the rules under which the admiralty jurisdiction had been so much restricted, then prohibitions must have issued in all cases of mariners' wages, contracts under seal, (bottomry and respondentia bonds), contracts signed on shore, or within any county, including every port in the realm; and the English Court of Admiralty would have been denied its entire jurisdiction, and, even were such the case, it will hardly be contended, that the English Court of King's Bench would have annihilated all cases of admiralty and maritime jurisdiction throughout the world, so that the words used in the constitution would have no force or signification whatever. That court surely has not now, nor could it have then had, any such power to affect the legislation and institutions of other nations. It had no such power in the days of Lord Coke. If it could not have abolished all cases of admiralty and maritime jurisdiction, how could it abolish any of them? *

* *Ante* §§ 14, 28, 37; *The Exchange v. McFaddon*, 7 Cranch, 136.

CHAPTER VIII.

THE ADMIRALTY JURISDICTION OF SCOTLAND AND IRELAND.

§ 114. THE admiralty and maritime jurisdiction of the other, portions of the Empire of Great Britain, and even of that island, by no means harmonized with this narrow jurisdiction of the High Court of Admiralty of the kingdom of England. In the kingdom of Scotland, and in the American Colonies, the admiralty jurisdiction was of the most extensive and beneficial character.¹

SCOTLAND.

§ 115. "It is true that in Scotland, before the creation of an admiral after the example of other nations, the Deans of the Gild were ordinarily judges in civil debates betwixt mariner and merchant, as the Water-Bailey betwixt mariner and mariner, like as the High Justice was judge in their criminals. Which actions, all now (A. D. 1682) falling forth betwixt the persons aforesaid, of due, appertain to the jurisdiction of the Admiral, and therefore his Judge Depute or Commissar, called Judge Admiral, and none other, should sit, cognosce, determine and minister justice in the aforesaid causes. As likewise upon all complaints, contracts, offences, pleas, charges, assecurations, debts, counts, charter parties, covenants, and all other writings concerning lading and unlading of ships, fraughts (freights), hires, money lent upon casualties and hazard at sea, and all other businesses whatsoever amongst seafarers, done on sea, this side sea, or beyond sea, not forgetting the cognition of writs and appeals from other judges, and the causes and actions of reprisals or letters of mark," and also a most extended police and criminal jurisdiction.²

The Scotch Admiralty Court has always had jurisdiction also in

¹ De Lovio v. Boit, 2 Gal. Rep. 468, 475.

² The Collection of Sea Laws: a Scotch tract, in Malynes, chap. 2, 47, 48.

cases arising on Bills of Exchange and other mercantile causes not maritime, and also jurisdiction to arrest a debtor about to depart the country, and compel him to give security to pay the debt.*

§ 116. The High Admiral is His Majesty's Justice General upon the seas, and in all ports, harbors, creeks; and upon the navigable rivers below the first bridges and within the flood mark, he hath jurisdiction in all maritime and seafaring causes, foreign and domestic, whether civil or criminal, within the realm. The jurisdiction of the Court of Admiralty is both civil and criminal. In civil matters, the Judge Admiral is judge in the first instance, in all maritime causes, as in questions on charter parties, freights, salvages, wrecks, bottomries, policies of insurance, and all questions relating to the lading and unlading of ships, or any act to be performed within the bounds of his jurisdiction. He has jurisdiction also in all actions for recovery of goods, or their value, where the goods have been sent by sea from one port to another. In criminal matters, he has the exclusive cognizance in the crimes of mutiny and piracy on shipboard.⁴

IRELAND.

§ 117. There has also been in Ireland, from time immemorial, an Instance Court of Admiralty, and, up to the year 1782, it also exercised the powers of a prize court. By the articles of Union, and by the act of 1782, its jurisdiction was confined to causes civil and maritime only.⁵

I have not thought it necessary to inquire into the details of the actual jurisdiction of the Irish Admiralty, and give it this passing notice, only further to illustrate the remark which has been made before, that, in the different portions of the British Empire, admiralty jurisdiction was exercised in a widely different extent, and that "all admiralty and maritime cases" would even then embrace more than the small class permitted to the English Admiralty.

³ Boyd's Proceedings of the Admiralty of Scotland, 67; *ibid.* 69.

⁴ Dunlap's Prac. 34; Boyd's Proceedings, 4, 5, 6; 2 Brown Civ. & Ad. 30; Bell's Dic. of the Laws of Scotland, 29 (words "Admiral" and "Court of Admiralty"); Erskine's Laws of Scotland, 32.

⁵ 2 Brown Civ. & Ad. 32.

CHAPTER IX.

THE ADMIRALTY AND MARITIME JURISDICTION OF THE BRITISH COLONIES.

§ 118. At the time of the American Revolution, in addition to the admiralty and maritime tribunals of England and Scotland, there existed the Admiralty Courts of the British Colonies.

Under the British Constitution, the statutes of the Imperial Parliament do not bind the colonies, unless they are expressly named, while the king's commission runs through his whole dominions.¹ It is under the king's commissions, that the colonial, vice-admiralty courts were created, and their jurisdiction remained as it had been originally granted. Those commissions were issued from the High Court of Admiralty, and thus furnished, at their respective dates, evidence not only of the jurisdiction of the colonial courts to which they were issued, but also of the High Court of Admiralty at home, from which they emanated. They issued from time to time to the governors, vice-admirals, and judges of vice-admiralty in the colonies. They are of four kinds:—

1st. The commission to the governor as governor, which issued from the office of the Secretary of State.

2d. The commission to the governor as vice-admiral, which issued from the High Court of Admiralty.

3d. The general commission to the governor, and all the principal officers of state, under the act for the more effectual suppression of piracy, which issued from the office of the Secretary of State.

4th. The commission to the judges of the Vice-Admiralty Court, which issued from the High Court of Admiralty.²

¹ *De Lovio v Boit*, 2 Gall. 470; *Waring v Clarke*, 5 How. 461.

² *Post*, § 124, *et seq.*; *The Elizabeth*, 1 Hag. Ad. 226; *The Volunteer*, 1 Sumn. 557.

§ 119. Many of these commissions may be found in the offices of the secretaries of state of the different states; but as they are not easily accessible, I shall insert one of each at full length, although some portion of their contents has no particular relation to the matter of the admiralty jurisdiction. They are inserted without regard to chronological order, because, from the imperfection of the records in the State of New York, they are not preserved in that order. The commission of the governor gave him power to create courts of admiralty, according to the commissions which he should receive from the High Court of Admiralty at home.*

§ 120. A large portion of the commission of the governor, as the political head of the colony, has no further relation to this question, than as showing how completely the organization and power of the courts was kept within the control of mere prerogative regulation. That portion of it will not be inserted here. The clauses giving the power to create courts are inserted, to show as well that the common law and admiralty jurisdiction were created in the same manner, as that the admiralty jurisdiction was granted in very general terms.

Commission of the Governor.

§ 121. "William the Third, by the grace of God, of England, Scotland, France, and Ireland, King, defender of the faith, &c. To our right trusty and well beloved Edward Hide, Esq., commonly called Lord Cornbury, greeting. . . . And we do by these presents, give and grant unto you full power and authority, with the advice and consent of our said council, to erect, constitute and establish such and so many courts of judicature and public justice, within our said province and the territories under your government, as you and they shall think fit and necessary for the hearing and determining of all causes, as well criminal as civil, according to law and equity, and for awarding of execution thereupon, with all reasonable and necessary powers, authorities, fees and privileges belonging unto them, as also to appoint and commission-

* *Waring v Clarke*, 5 How. 454.

ate fit persons, in the several parts of your government, to administer the oaths appointed by act of parliament, to be taken instead of the oaths of allegiance and supremacy and the test, unto such as shall be obliged to take the same, and likewise to require them to subscribe the forementioned association. And we do hereby authorize and empower you to constitute and appoint judges and justices of the peace and other necessary officers and ministers in our said province, for the better administration of justice and putting the laws in execution, and to administer or cause to be administered such oath or oaths as are usually given for the due execution and performance of offices and places, and for the clearing of truth in judicial causes.”

§ 122. “And we do hereby give and grant unto you, the said Lord Cornbury, full power and authority to erect one or more Court, or Courts Admiral within our said province and territories for the hearing and determining of all marine and other causes and matters, proper therein to be heard, with all reasonable and necessary powers and authorities, fees and privileges, as also to exercise all powers belonging to the place and office of vice-admiral, of and in all the seas and coasts within your government, according to such commission, authorities and instructions as you shall receive from ourself, under the seal of our admiralty, or from our High Admiral, or commissioners for executing the office of High Admiral of our foreign plantations for the time being.”

§ 123. The commission to the governor as vice-admiral was very full, granting, in language so clear that it cannot be misunderstood, an admiralty jurisdiction as wide and beneficial as the most zealous supporters of the English Admiralty ever claimed for it.

The commission to Lord Cornbury as vice-admiral was as follows. The original commission is in Latin, and I have availed myself of the English translation of similar commissions given by Stokes and Du Ponceau.⁴

⁴ Dunlap's Ad. Prac. 35; Stokes' View of the Colonies, 166; Du Pon. on Juris. 158.

Commission of the Vice-Admiral.

§ 124. "Letters patent granted to the very noble and honorable, Edward, Lord Cornbury, Governor of the provinces and colonies of New York, Connecticut, and East and West New Jersey, in America, and of the same Commander in Chief, for the time being, for the office of Vice-Admiral in the said provinces and colonies of New York, Connecticut, and East and West New Jersey.

"William the Third, by the grace of God, of England, Scotland, France and Ireland, King, and Defender of the Faith, to our well beloved, and liege Edward, Lord Cornbury, our Governor of our provinces and colonies of New York, Connecticut, and East and West New Jersey, in America, and Commander in Chief of the said provinces and colonies for the time being, greeting:

§ 125. "We confiding very much in your fidelity, care, and circumspection in this behalf, do, by these presents, which are to continue during our pleasure only, constitute and depute you the said A. B. Esq., our Captain General and Governor in Chief aforesaid, our Vice-Admiral, commissary, and deputy in the office of Vice-Admiralty, in our provinces and colonies, aforesaid, and the territories depending thereon in America, and in the maritime parts of the same and thereto adjoining whatsoever; with power of taking and receiving all and every the fees, profits, advantages, emoluments, commodities, and appurtenances whatsoever due, and belonging to the said office of Vice-Admiral, commissary, and deputy in our provinces and colonies, and the territories depending thereon, and maritime parts of the same and adjoining to them whatsoever, according to the ordinances and statutes of our High Court of Admiralty in England.

§ 126. "And we do hereby remit and grant unto you, the aforesaid A. B., our power and authority in and throughout our provinces and colonies, aforementioned, and the territories depending thereon, and maritime parts whatsoever of the same and thereto adjacent, and also throughout all and every the sea shores, public streams, ports, fresh water rivers, creeks, and arms, as well of the sea, as of the rivers and coasts whatsoever of our said provinces and colonies, and the territories depending thereon, and maritime

parts whatsoever of the same and thereto adjacent, as well within liberties and franchises, as without.

“To take cognizance of, and proceed in, all civil and maritime causes, and in complaints, contracts, offences, or suspected offences, crimes, pleas, debts, exchanges, accounts, charter parties, agreements, suits, trespasses, injuries, extortions, and demands, and business civil and maritime whatsoever, commenced or to be commenced between merchants, or between owners and proprietors of ships and other vessels, and merchants or others whomsoever, with such owners and proprietors of ships and all other vessels whatsoever, employed or used within the maritime jurisdiction of our vice-admiralty of our said provinces and colonies, and the territories depending thereon, or between any other persons whomsoever, had, made, begun, or contracted for any matter, thing, cause, or business whatsoever, done or to be done within our maritime jurisdiction aforesaid, together with all and singular their incidents, emergencies, dependencies, annexed or connexed causes whatsoever or howsoever, and such causes, complaints, contracts, and other the premises above said, or any of them, which may happen to arise, be contracted, had or done, to hear and determine according to the rights, statutes, laws, ordinances, and customs anciently observed.

§ 127. “And moreover, in all and singular complaints, contracts, agreements, causes, and businesses civil and maritime, to be performed beyond the sea, or contracted there, howsoever arising or happening: and also in all and singular other causes and matters, which in any manner whatsoever touch or any way concern, or anciently have and do, or ought to belong unto the maritime jurisdiction of our aforesaid Vice-Admiralty in our said provinces and colonies, and the territories depending thereon, and maritime parts thereof, and to the adjoining whatsoever; and generally, in all and singular all other causes, suits, crimes, offences, excesses, injuries, complaints, misdemeanors, or suspected misdemeanors, trespasses, regrating, forestalling, and maritime businesses whatsoever, throughout the places aforesaid, within the maritime jurisdiction of our Vice-Admiralty of our provinces and colonies aforesaid, and the territories depending thereon by sea or water, on the

banks or shores of the same howsoever done, committed, perpetrated, or happening.

§ 128. "And also to inquire by the oaths of honest and lawful men of our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and adjoining to them whatsoever, dwelling both within liberties and franchises and without, as well of all and singular such matters and things, which of right, and by the statutes, laws, ordinances, and the customs anciently observed were wont and ought to be inquired after, as of wreck of the sea, and of all and singular the goods and chattels of whatsoever traitors, pirates, manslaughterers, and felons, howsoever offending within the maritime jurisdiction of our Vice-Admiralty of our provinces and colonies, aforementioned, and the territories depending thereon, and of the goods, chattels, and debts of all and singular their maintainers, accessories, councillors, abettors, or assistants whomsoever.

"And also of the goods, debts, and chattels of whatsoever person or persons, felons of themselves, by what means, or howsoever coming to their death within our aforesaid maritime jurisdiction, wheresoever any such goods, debts, and chattels, or any part thereof, by sea, water, or land in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, as well within liberties and franchises, as without, have been or shall be found forfeited, or to be forfeited, or in being.

§ 129. "And moreover, as well of the goods, debts, and chattels, of whatsoever other traitors, felons, and manslaughterers wheresoever offending, and of the goods, debts, and chattels of their maintainers, accessories, counsellors, abettors, or assistants, as of the goods, debts, or chattels of all fugitives, persons convicted, attainted, condemned, outlawed, or howsoever put, or to be put in exigent for treason, felony, manslaughter, or murder, or any other offence or crime whatsoever; and also concerning goods waived, flotsen, jetson, lagon, shares and treasure found, or to be found; deodands, and of the goods of all others whatsoever taken, or to be taken, as derelict, or by chance found, or howsoever due, or to be

due; and of all other casualties, as well in, upon, or by the sea and shores, creeks or coasts of the sea, or maritime parts, as in, upon, or by all fresh waters, ports, public streams, rivers, or creeks, or places overflown whatsoever, within the ebbing and flowing of the sea or high water, or upon the shores and banks of any of the same within our maritime jurisdiction aforesaid, howsoever, whensoever, or by what means soever arising, happening, or proceeding, or wheresoever such goods, debts, and chattels, or other the premises, or any parcel thereof may, or shall happen to be met with, or found within our maritime jurisdiction aforesaid.

“And also concerning anchorage, lastage, and ballast of ships, and of fishes royal, namely sturgeons, whales, porpoises, dolphins, kiggs, and grampuses, and general of all other fishes whatsoever, which are of a great or very large bulk or fatness, anciently by right or custom, or any way appertaining or belonging to us.

§ 130. “And to ask, require, levy, take, collect, receive, and obtain for the use of us, and to the office of our High Admiral of Great Britain aforesaid for the time being, to keep and preserve the said wreck of the sea, and the goods, debts, and chattels of all and singular other the premises.

“Together with all, and all manner of fines, mulcts, issues, forfeitures, amerciaments, ransoms, and recognizances, whatsoever, forfeited, or to be forfeited, and pecuniary punishment for trespasses, crimes, injuries, extortions, contempts, and other misdemeanors whatsoever, howsoever imposed or inflicted, or to be imposed or inflicted for any matter, cause, or thing whatsoever in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and thereto adjoining, in any Court of our Admiralty there held or to be held, presented or to be presented, assessed, brought, forfeited, or adjudged; and also all amerciaments, issues, fines, perquisites, mulcts, and pecuniary punishments whatsoever, and forfeitures of all manner of recognizances, before you or your lieutenant, deputy or deputies in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, happening or imposed, or to be imposed or inflicted, or by any means assessed, presented, forfeited, or adjudged, or how-

soever by reason of the premises, due or to be due in that behalf to us, or to our heirs and successors.

§ 131. "And further to take all manner of recognizances, cautions, obligations, and stipulations, as well to our use as at the instance of any parties, for agreements or debts, or other causes whatsoever, and to put the same into execution, and to cause and command them to be executed; and also to arrest, and cause and command to be arrested, according to the civil and maritime laws, and ancient customs of our said court, all ships, persons, things, goods, wares and merchandizes, for the premises and every of them, and for other causes whatsoever concerning the same, wheresoever they shall be met with, or found throughout our said provinces and colonies, and the territories depending thereon, and maritime parts thereof and thereto adjoining, as well within liberties and franchises, as without; and likewise for all other agreements, causes or debts, howsoever contracted or arising, so that the goods or persons may be found within our jurisdiction aforesaid.

§ 132. "And to hear, examine, discuss, and finally determine the same, with their emergencies, dependencies, incidents, annexed and connexed causes and businesses whatsoever; together with all other causes, civil and maritime, and complaints, contracts, and all and every the respective premises whatsoever above expressed, according to the laws and customs aforesaid, and by all other lawful usage, means and methods, according to the best of your skill and knowledge.

"And to compel all manner of persons in that behalf, as the case shall require, to appear and to answer, with power of using any temporal correction, and of inflicting any other penalty or mulct, according to the laws and customs aforesaid.

"And to do and administer justice, according to the right order, the cause of law, summarily and plainly, looking only into the truth of the facts.

§ 133. "And to fine, correct, punish, chastise, reform, and to imprison, and cause and command to be imprisoned in any

jaols, being within our provinces and colonies, aforesaid, and the territories depending thereon, the parties guilty, and the contemnners of the law and jurisdiction of our Admiralty aforesaid, and violators, usurpers, delinquents and contumacious absenters, masters of ships, mariners, rowers, fishermen, shipwrights, and other workmen and artificers whatsoever exercising any kind of maritime affairs, according to the rights, statutes, laws and ordinances, and customs anciently observed; and to deliver and absolutely discharge, and cause and command to be discharged, whatsoever persons imprisoned in such cases, who are to be delivered.

§ 134. "And to preserve, or cause to be preserved, the public streams, ports, rivers, fresh waters and creeks whatsoever within our maritime jurisdiction aforesaid, in what place soever they be in our provinces and colonies aforesaid, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, as well for the preservation of our navy royal, and of the fleets and vessels of our kingdom and dominions aforesaid, as of whatsoever fishes increasing in the rivers and places aforesaid.

"And also to keep, and cause to be executed and kept, in our said provinces and colonies, and the territories depending thereon, and maritime parts thereof and thereto adjacent whatsoever, the rights, statutes, laws, ordinances and customs anciently observed.

"And to do, exercise, expedite, and execute all and singular other things in the premises, and every of them, as they by right and according to the laws and statutes, ordinances and customs aforesaid should be done.

§ 135. "And moreover to reform nets too close, and other unlawful engines or instruments wheresoever, for the catching of fishes whatsoever, by sea or public streams, ports, rivers, fresh waters or creeks whatsoever, throughout our provinces and colonies aforesaid, and the territories depending thereon, and maritime parts of the same and thereto adjacent, used or exercised, within our maritime jurisdiction aforesaid wheresoever.

"And to punish and correct the exercisers and occupiers thereof, according to the statutes, laws, ordinances and customs aforesaid.

§ 136. "And to pronounce, promulge and interpose all manner of sentences and decrees, and to put the same in execution ; with cognizance and jurisdiction of whatsoever other causes, civil and maritime, which relate to the sea, or which any manner of ways respect or concern the sea, or passage over the same, or naval or maritime voyages, or our said maritime jurisdiction, or the places or limits of our said Admiralty and cognizance aforementioned, and all other things done, or to be done.

"With power also to proceed in the same, according to the statutes, laws, ordinances and customs aforesaid, anciently used, as well of mere office mixed or promoted, as at the instance of any party, as the case shall require and seem convenient.

§ 137. "And likewise with cognizance and decision of wreck of the sea, and of the death, drowning, and view of dead bodies of all persons howsoever killed or drowned, or murdered, or which shall happen to be killed, drowned, or murdered, or by any other means come to their death, in the sea, or public streams, ports, fresh waters, or creeks whatsoever, within the flowing of the sea and high water mark, throughout our aforesaid provinces and colonies, and the territories depending thereon, and maritime parts of the same, and thereto adjacent, or elsewhere within our maritime jurisdiction aforesaid.

"Together with the cognizance of Mayhem in the aforesaid places, within our maritime jurisdiction aforesaid, and flowing of the sea and water there happening ; with power also of punishing all delinquents in that kind, according to the exigencies of the law and customs aforesaid.

"And to do, exercise, expedite, and execute all and singular other things, which in and about the premises only shall be necessary or thought meet, according to the rights, statutes, laws, ordinances and customs aforesaid.

§ 138. "With power of deputing and surrogating in your place for the premises, one or more deputy, or deputies, as often as you shall think fit ; and also with power from time to time of naming, appointing, ordaining, assigning, making, and constituting whatsoever other necessary, fit, and convenient officers and ministers un-

der you, for the said office, and execution thereof, in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same, and thereto adjacent whatsoever.

§ 139. "Saving always the right of our High Court of Admiralty of England, and also of the Judge and Register of the said Court, from whom or either of them, it is not our intention in any thing to derogate by these presents; and saving to every one who shall be wronged, or grieved, by any definitive sentence or interlocutory decree, which shall be given in the Vice-Admiralty Court of our provinces and colonies aforesaid, and the territories depending thereon, the right of appealing to our aforesaid High Court of Admiralty of England.

§ 140. "Provided nevertheless, and under this express condition, that if you, the aforesaid A. B. our Captain General and Governor in Chief, shall not yearly, to wit, at the end of every year, between the feast of Saint Michael the Archangel and All Saints duly certify, and cause to be effectually certified (if you shall be thereunto required), to us, and our Lieutenant Official, Principals, and Commissary-General and Special, and Judge and President of the High Court of our Admiralty of England, aforesaid, all that which from time to time, by virtue of these presents, you shall do and execute, collect, or receive in the premises, or any of them, together with your full and faithful account thereupon, to be made in an authentic form, and sealed with the Seal of our Office, remaining in your custody, that from thence, and after default therein, these our Letters Patent of the Office of Vice-Admiralty aforesaid, as above granted, shall be null and void, and of no force or effect.

§ 141. "Further we do, in our name, command all and singular our Governors, Justices, Mayors, Sheriffs, Captains, Marshals, Bailiffs, Keepers of all our Gaols and Prisons, Constables, and all other our Officers and faithful liege subjects whatsoever, and every of them, as well within liberties and franchises, as without, that in and about the execution of the premises, and every of them, they be aiding, favouring, assisting, submissive, and yield obedience, in all things as is fitting to you, the aforesaid A. B. our Captain-Gen-

eral and Governor in Chief of our provinces and colonies aforesaid, and to your Deputy whomsoever, and to all other Officers by you appointed, and to be appointed, of our said Vice Admiralty aforesaid, and the territories depending thereon, and maritime parts of the same, and thereto adjoining, under pain of the law, and the peril which will fall thereon.

“Given at London, in the High Court of our Admiralty, of England aforesaid, under the Great Seal thereof, this 3d day of October, 1701.”

§ 142. There was, next, the commission, or letters patent to the governor and principal officers, under the act of 11th and 12th Wm. III., for the more effectual suppression of piracy.* This authorized the creating or assembling, whenever occasion might require, admiralty courts for the trial of piracies, felonies, and robberies committed on the sea, or within any harbor, river, creek or place, where the admiral had power, authority, and jurisdiction, according to the civil law and the course of the admiralty. The commission, to Governor Ballamont was as follows :

General Admiralty Commission.

§ 143. “William the Third, by the grace of God of England, Scotland, France, and Ireland, King, Defender of the Faith, &c., To our Right trusty and right well beloved cousin Richard, Earle of Bellamont, our Capt. Genl. and Govr. in Chief of our province of New York, and Territories depending thereon, in America ; and to the Governor or Commander in Chief of the said province of New York for the time being : To our Trusty and well beloved John Nanfan, Esquire, our Lieut. Govr. of the said province of New Yorke, and to our Lieut. Govr. of the said province for the time being : To our Trusty and well beloved, the Govr. of our Collony of Connecticut for the time being : To our Vice Admirall or Vice Admiralls of our Province of New Yorke, East and West New Jersey, and Connecticut, now and for the time being : To our Trusty and well beloved Stephen Cortland, Wm. Smith, Peter Schuyler, John Young, James Graham, Abraham DePeyster, Robt. Living-

* 6 Evans' Stat. 126; Stokes' Colonies, 231-234.

ston, Samuel Staats, John Carbell, and Robert Walters, Esqs., members of our council in the said province of New Yorke, during their continuance in our said council, and to the members of our council in the said Island for the time being: To our Chief Justice of our province of New York, now and for the time being: To our Judge or Judges of the Vice Admiralty in the said province New Yorke, East and West New Jersey and Connecticut, now and for the time being: To our trusty and well beloved, the Captains and Commanders of our ships of Warr within the Admiralty Jurisdiction of the said provinces of New York, East and West New Jersey, and Connecticut, now and for the time being: To our Trusty and well beloved, our Secretary of the said province of New York, now and for the time being: To our Trusty and well beloved Thomas Weaver, Esquire, Receiver of our Revenue of our said province of New Yorke, and to the receiver of our revenue in the said province for the time being: To our Trusty and well beloved Patrick Mayne and Edward Randolph, Esqrs., Surveyors Genl. of our Customs in America and to the Surveyors General of our customs in America for the time being: To our trusty and well beloved, the Collectors of our plantation duties in the said provinces of New York East and West New Jersey, and Connecticut, appointed in pursuance of an act made in the Twenty-fifth year of the reign of our Royal Uncle, King Charles the Second, for the better securing the plantation trade, now and for the time being: and to our trusty and well beloved George Larbin, Esquire, Greeting:

§ 144. "Whereas, by an act passed last session of parliament, entitled an act for the more effectual suppressing of piracy, it is, amongst other things, enacted, that all piracies, felonies and robberies, committed in or upon the sea, or in any haven, river, creek, or place where the Admiral or Admiralls have power, authority or jurisdiction, may be examined, enquired of, tried, heard, and determined and adjudged, according to the directions of the said act, in any place at sea, or upon the land, in any of our Islands, plantations, Colonies, Dominions, forts or factories, to be appointed for that purpose by our Commission or Commissions, under the great seal of England, or the Seal of the Admiralty of England, directed to

all or any of the Admirals, Vice Admirals, Rear Admirals, Judges of Vice Admirals, or Commanders of any of our Ships of War; and also to all or any such person or persons, officer or officers, by name, or for the time being, as we should think fit to appoint, which said Commissioners shall have full power, jointly or severally, by warrant under the hand and seal of them, or any of them, to commit to safe custody any person or persons against whom Information of piracy, Robbery, or felony upon the sea, shall be given upon oath; and to call and assemble a Court of Admiralty on Ship board, or upon the land, when, and as often as occasion shall require, which Court shall consist of seven persons, at least. And it is further enacted, that if so many of the persons aforesaid cannot conveniently be assembled, any three of the aforesaid persons, whereof the President or Chief of some English factory, or the Govr., Lieut. Govr., or member of our Council, in any of the plantations or colonies aforesaid, or Commanders of some of our Ships, is always to be one, shall have full power and authority, by virtue of the said act, to call and assemble any other persons on Ship board, or upon the land, to make up the number of seven. And it is provided, that no persons but such as are known merchants, factors, or planters, or such as the Captains, Lieuts., or warrant officers, in any of our Ships of war, or Captains, Masters or Mates, of some English Ship, shall be capable of being so called; and sitting and voting in the said Court.*

§ 145. "And it is further enacted, that such persons, called and assembled as aforesaid, shall have full power and authority, according to the course of the Admiralty, to issue warrants for bringing any persons accused of piracy or Robbery before them, to be tried, heard, and adjudged, and to summon witnesses, and to take informations and Examinations of witnesses upon their oath, and to do all things necessary for the hearing and final determination of any case of piracy, robbery and felony, and to give Sentence and Judgment of death, and to award execution of the offenders convicted and attainted as aforesaid, according to the will, acts, and the methods and rules of the Admiralty; and that all and every person and persons so convicted and attainted of piracy and robbery, shall have

* 6 Evans' Stat. 126.

and suffer such losses of lands, goods, and chattels, as if they had been attainted and convicted of any piracies, felonies, and robberies, according to a statute made in the 28th year of the reign of King Henry the Eighth, for tryalls of pyracies or Roberies upon the high sea.

§ 146. "Now Know Ye, that we, in pursuance of the said act of our special grace, certain knowledge and mere motion, have made, constituted and appointed, and by these presents do make, constitute and appoint you, the said Richard, Earl of Bellamont, and the Govr. or Commander in Chief of the said province of New York for the time being; John Nanfan, and the Lieut. Govr. of the said province for the time being; the Govr. of our Collony of Connecticut for the time being; the Vice Admiral or Vice Admirals of our said province of New Yorke, East and West New Jersey, and Connecticut, for the time now, and for the time being; Stephen Cortland, William Smith, Peter Schuyler, John Young, James Graham, A. Depeyster, Robert Livingston, Saml. Staats, John Carbill, and Robert Walters, members of our Council in the said province of New Yorke, during their continuance in the said Council, and the members of our Council in the said province for the time being; our Chief Justice in our said province of New York for the time being; our Judge or Judges of the Vice Admiralty in the said provinces of New Yorke, East and West New Jersey and Connecticut, now and for the time being; the Capt. and Commander of our Ships of War within the Admiralty Jurisdiction of the said provinces of New Yorke, East and West New Jerseys and Connecticut, now and for the time being; the Secretary of the said province of New Yorke, now and for the time being: Thomas Weaver, and the receiver of our revenue of the province of New York for the time being; Patrick Mayne and Edward Randolph, and the Surveyor General of our Customs in America for the time being; our Collectors of our plantation duties in the said provinces of New York, and East and West New Jerseys and Connecticut, for the time being, and George Larbin, to be our Commissioners at the said several provinces of New York, East and West New Jersey, and Connecticut, for the examining, enquiring of, trying, hearing, and determining and adjudging, according to the directions of the said

act, in any place at sea, or upon the land, at the said provinces of New York, East and West New Jerseys, and Connecticut, all pyracies, felonies, and robberies, committed, or which shall be committed, in or upon the sea, or within any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction. And you, the said Richard, Earl of Bellamont, and the Govr. or Commander in Chief of the said province of New York, for the time being; John Nanfan, and the Lieut. Govr. or Commander in Chief of the said province, for the time being; the Govr. of our Colony of Connecticut, for the time being; the Vice Admiral or Vice Admirals of our said provinces of New Yorke, East and West New Jersey, and Connecticut, now, and for the time being; Stephen Cortland, William Smith, Peter Schuyler, John Young, James Graham, Abraham Depeyster, Robert Livingston, Samuel Staats, John Carbill and Robert Walters, members of our Council in the said province, during their continuance in the said Council, and the members of our said Council in the said province, for the time being; our Chief Justice in our said province of New York, for the time being; our Judge or Judges of the Vice Admiralty in the said provinces of New York, East and West New Jersey and Connecticut, now and for the time being; the Captains and Commanders of our Shippes of War within the Admiralty Jurisdiction of the said provinces of New York, East and West New Jerseys and Connecticut, now and for the time being; the Secretary of the said province of New Yorke, now and for the time being; Thomas Weaver, and the receiver of our revenue of our said province of New York, for the time being; Patrick Mayne and Edward Randolph, and the Surveyors Genl. of our Customes in America; our Collectors of our plantation duties in the said provinces of New Yorke, East and West New Jersey and Connecticut, for the time being; George Larbin, our Commissioners at the said provinces of New York, East and West New Jersey and Connecticut, for the purposes herein above mentioned; we do make, ordain and constitute, by these presents:

§ 147. "Hereby giving and granting unto you, our said Commissioners, jointly or severally, or any one of you, by warrant under the hand and seal of you, or any one of you, full power and author-

ity to committ to safe custody any person or persons against whom Information of piracy, robbery, or felony upon the sea, shall be given upon oath, which oath you, or any one of you, shall have full power, and are hereby required to administer to all, and assemble a Court of Admiralty on Ship board, or upon the land, when, and as often as occasion shall require (which Court, our will and pleasure is), shall consist of seven persons at the least, and if so many of you, our said Commissioners, cannot conveniently be assembled, any three or more of you, whereof you, the said Richard, Earl of Bellamont, or the Govr. or Commander in Chief of New Yorke, East and West New Jersey, or Connecticut, or either of the said places for the time being, always to be one, shall have full power and authority, by virtue of the said act and of these persons, to call and assemble any other persons on ship board, or upon the land, to make up the number of seven ; provided, that no persons but such as are known merchants, factors, or persons, or such as are Captains, Lieutenants, or warrant officers in any of our ships of war, Captains, Masters, or Mates, of some English Ships, shall be capable of being so called, sitting and voting in the said court.

§ 148. " And our further will and pleasure is, and we do hereby expressly declare and command, that such persons, called and assembled as aforesaid, shall have full power and authority, according to the course of the Admiralty, to issue warrants for bringing any persons accused of piracy or robbery before them, to be tried, heard, and adjudged, and to summon witnesses, and to take informations and examinations of witnesses upon their oath, and to do all things necessary for the hearing and final determination of any case of piracy, robbery, or felony upon the sea, and to give sentence and judgment of death, and to award execution of the offenders, convicted and attainted as aforesaid, according to the civil laws and the methods and rules of the Admiralty; and that all and every person or persons so convicted or attainted of pyracies and robbery, shall have and suffer such losses of lands, goods, and chattels, as if they had been attainted and convicted of any pyracies, felonies, and robberies, according to the aforementioned statute made in the reign of King Henry the Eighth.

§ 149. "And our express will and pleasure is, and we do hereby direct and command, that so soon as any Court shall be assembled as aforesaid, either on ship board, or upon the land, this our commission shall first be openly read, and the said Court, then and there, shall be solemnly called and proclaimed, and then you, the said Richard, Earl of Bellamont, or the Govr. or Commander in Chief of New Yorke, East and West New Jersey or Connecticut, or either of the said places for the time being — shall, in the first place, publicly in open Court, take the oath appointed in the said act; and you, the said Richard, Earl of Bellamont, or the Govr. or Commander in Chief of New Yorke, East and West New Jersey, or Connecticut, or either of the said places, for the time being, having taken the oath in manner and form aforesaid, shall individually administer the same to every person who shall sit and have and give a voice in the said Court, upon the trial of such prisoner or prisoners as aforesaid. And lastly, we do hereby direct, impower and require you, our said Commissioners, to proceed, act, adjudge and determine in all things according to your powers, authority and directions of the above recited act, and of these presents; and the entry or enrollment thereof, shall be unto you, and each and every of you, for so doing, a sufficient warrant and discharge.

"In witness whereof, we have caused these our letters to be made patent. Witness ourself, at Westminster, the 23d day of November, in the twelfth year of our reign."

§ 150. The commissions to the judges of the vice-admiralty courts, were equally full and explicit in their grant of jurisdiction, and it was under these commissions that the judicial powers of the admiralty, in civil causes, were actually administered in the colonies, from the beginning to the time of our Revolution.

The commission to Hon. Richard Morris, dated 15th Oct., 1762, was as follows:—

Commission of the Vice-Admiralty Judge.

"Letters patent granted to Richard Morris, Esq., for the office of Judge of the respective Courts of the Provinces and Colonys of New York, Connecticut, and East and West Jerseys, in America.

§ 151. "George the Third, by the grace of God, of Great Britain, France and Ireland, King, defender of the faith: To our beloved Richard Morris, Esquire, greeting: We do by these presents, make, ordain, nominate and appoint you, the said Richard Morris, Esquire, to be our Commissary in our provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, and Territories thereunto belonging, in the room of the former judge, deceased, hereby granting unto you full power to take cognizance of, and proceed in all causes civil and maritime, and in complaints, contracts, offences, or suspected offences, crimes, pleas, debts, exchanges, policies of assurance, accounts, charter parties, agreements, bills of loading of ships, and all matters and contracts which in any manner whatsoever, relate to freight due for ships, hired or let out, transport money or maritime usury (otherwise bottomry), or which do any ways concern suits, trespasses, injuries extortions, demands, and affairs civil and maritime whatsoever, between merchants or between owners and proprietors of ships, or other vessels, and merchants, or other persons whomsoever, with such owners and proprietors of ships or other vessels whatsoever, employed or used, or between any other persons howsoever had, made, began, or contracted for any matter, cause or thing, business, or injury whatsoever, done or to be done as well in, upon, or by the sea, or public streams, or fresh waters, ports, rivers, creeks, and places overflowed whatsoever, within the ebbing and flowing of the sea, or high water mark, as upon any of the shores, or banks adjoining to them or either of them, together with all and singular, their incidents, emergencies, dependencies annexed and connexed causes whatsoever; and such causes, complaints, contracts and other the premises aforesaid, or any of them, howsoever the same may happen to arise, be contracted, had, or done, to hear, and determine (according to the civil and maritime laws and customs of the High Court of Admiralty in England), in our said provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, and territories thereunto belonging whatsoever, and also with power to sit and hold courts in any cities, towns, and places in our provinces and colonies of New York, Connecticut,

¹ *Vide The Elizabeth*, 1 Hag. Ad. 226.

and East and West Jerseys, in America aforesaid, for the having and determining of all such causes and businesses, together with all and singular, their incidents, emergencies, dependencies annexed and connexed causes whatsoever, and to proceed judicially and according to law, in administering justice therein.

§ 152. "And moreover, to compel witnesses, in case they withdraw themselves for interest, fear, favor, or ill-will, or any other cause whatsoever, to give evidence to the truth in all and every the causes above-mentioned, according to the exigencies of the law. And further, to take all manner of recognizances, cautions, obligations, and stipulations, as well to our use, as at the instance of any parties for agreements or debts and other causes and businesses whatsoever, and to put the same in execution, and to cause and command them to be executed. Also, duly to search and enquire of and concerning all goods of traitors, pirates, manslaughterers, felons, fugitives and felons of themselves, and concerning the bodies of persons drowned, killed, or by any other means coming to their death in the sea, or in any ports, rivers, public streams, or creeks, and places overflowed; and also concerning mayhem happening in the aforesaid places, and engines, toils and nets prohibited and unlawful, and the occupiers thereof. And moreover, concerning fishes royal, namely, whales, kiggs, grampusses, dolphins, sturgeons, and all other fishes whatsoever, which are of a great or very large bulk or fatness, by right or custom any ways used, belonging to us and to the office of our High Admiral of England.

§ 153. "And also of and concerning all casualties at sea, goods wrecked, flotzon, jetson, lagon, shares, things cast overboard and wreck of the sea, and all goods taken, or to be taken as derelict; or by chance found or to be found; and all other trespasses, misdemeanors, offences, enormities, and maritime crimes whatsoever, done and committed, or to be done and committed as well in and upon the high seas, as all ports, rivers, fresh waters, and creeks, and shores of the sea to high water mark, from all first bridges towards the sea, in and throughout our said provinces and colonies of New York, Connecticut, and East and West Jerseys, in America,

and maritime coasts thereunto belonging, howsoever, whensoever, or by what means soever arising or happening.

§ 154. "And all such things as are discovered and found out, as also all fines, mulcts, amersements and compositions due and to be due in that behalf; to tax, moderate, demand, collect and levy, and to cause the same to be demanded, levied, and collected, and according to law to compel and command them to be paid.

§ 155. "And also to proceed in all and every the causes and businesses above recited, and in all other contracts, causes, contempts and offences whatsoever, howsoever contracted or arising (so that the goods or persons of the debtors may be found within the jurisdiction of the Vice-Admiralty, in our provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, aforesaid), according to the civil and maritime laws and customs of our said High Court of Admiralty, of England, anciently used, and by all other lawful ways, means, and methods, according to the best of your skill and knowledge. And all such causes and contracts to hear, examine, discuss, and finally determine, saving, nevertheless, the right of appealing to our aforesaid High Court of Admiralty of England, and to the Judge or President of the said court, for the time being. And saving also the right of our said high Court of Admiralty of England, and also of the Judge and Register of the same Court, from whom, or either of them, it is not our intention in anything to derogate by these presents.

§ 156. "And also to arrest, and cause, and command to be arrested, all ships, persons, things, goods, wares and merchandizes for the premises, and every of them, and for other causes whatsoever, concerning the same, wheresoever they shall be met with, or found, within our provinces and colonies of New York, Connecticut, and East and West Jerseys, in America aforesaid, and territories, thereof, either within liberties, or without, and to compel all manner of persons in that behalf, as the case shall require, to appear and to answer with power of using any temporal coercion, and of inflicting any other penalty or mulct, according to the laws and customs aforesaid; and to do and minister justice

according to the right order and course of the law, summarily and plainly, looking only into the truth of the fact.

§ 157. "And we impower you in this behalf, to fine, correct, punish, chastise, and reform, and imprison, and cause and command to be imprisoned, in any gaols, being within our provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, aforesaid, and maritime places of the same, the parties guilty, and violators of the law and jurisdiction of our admiralty aforesaid, and usurpers, delinquents, and contumacious absentees, masters of ships, mariners, rowers, fishermen, shipwrights, and all other workmen and artificers whomsoever, exercising any kind of maritime affairs, as well according to the aforementioned civil and maritime laws, and ordinances, and customs aforesaid, and their demerits, as according to the statutes and ordinances aforesaid, and those of our kingdom of Great Britain, for the Admiralty of England, in that behalf made and provided.

§ 158. "And to deliver and absolutely discharge, and cause and command to be discharged, whatsoever persons imprisoned in such cases, who are to be delivered and to promulge and interpose all manner of sentences and decrees, and to put the same in execution, with cognizance and jurisdiction of whatsoever other causes, civil and maritime, which relate to the sea, and which any manner of ways respect or concern the sea, or passage over the same, or naval or maritime voyages performed, or to be performed, or the maritime jurisdiction above said, with power also to proceed in the same according to the civil and maritime laws and customs of our aforesaid Court, anciently used as well those of mere office mixt or promoted, as at the instance of any party, as the case shall require and seem convenient.

§ 159. "And we do by these presents (which are to continue during our royal will and pleasure only), further give and grant unto you, Richard Morris, Esquire, our said Commissary, the power of taking and receiving all and every, the wages, fees, profits, advantages and commodities whatsoever, in any manner due and anciently belonging to the said office, according to the custom of our High

Court of Admiralty of England, committing unto you our power and authority concerning all and singular, the premises in the several places above expressed (saving in all things the prerogative of our High Court of Admiralty of England aforesaid), together with power of deputing and surrogating in your place for and concerning the premises, one or more deputy or deputies, as often as you shall think fit.

§ 160. "Further, we do in our name command, and firmly and strictly charge, all and singular, our Governors, Commanders, Justices of the Peace, Mayors, Sheriffs, Marshals, Keepers of all our Gaols and Prisons, Bailiffs, Constables, and all other our officers and ministers and faithful liege subjects, in and throughout our aforesaid province and colonies of New York, Connecticut, and East and West Jerseys, in America, and the territories thereunto belonging; that in the execution of this our commission, they be from time to time aiding, assisting, and yield obedience in allthings, as is fitting unto you and your deputy whomsoever, under pain of the law and the peril which will fall thereon. Given at London, in the High Court of our Admiralty aforesaid, under the great seal thereof, the sixteenth day of October, in the year of our Lord, one thousand seven hundred and sixty-two, and of our reign the second."

His predecessor, Hon. Lewis Morris, held the office from 1738, under a commission in the same words. These commissions were translations of the commissions of the Hon. Roger Mompesson and the Hon. Francis Harrison, who had previously filled this office; and they embraced the colonies from Delaware to Massachusetts inclusive.*

* A memorandum of such other commissions as I have seen, is here inserted, to show their territorial extent. They are to be found in the office of the Secretary of State of New York.

James, Duke of York, &c., to Thomas Dongan, commission as Governor of New York and the Islands, dated September 30, 1682. His commission, as vice-admiral for the same, is dated October 3, 1682.

James II. to Edmund Andross, commission as Governor of New York and New England, April 7, 1688.

[William and Mary, to Henry Sloughter, commission as governor, dated January 4th, 1689.

§ 161. In these commissions and letters patent were found the source, extent, and definition of the admiralty and maritime jurisdiction in the colonies. I am not aware, that up to the Revolution, any British statute in relation to the admiralty jurisdiction named the colonies; and, the well known principles that statutes do not bind the colonies unless they are named, and that the king's commission runs through his whole dominions, are sufficient to make these commissions the legitimate source and law of the admiralty jurisdiction in the colonies. They declare that jurisdiction to extend to all causes, civil and maritime, embracing charter parties, bills of lading, policies of assurance, accounts, debts, exchanges, agreements, complaints, offences, and all matters which in any manner whatsoever relate to freight, transport money, maritime loans, bottomry, trespasses, injuries, extortions, demands and affairs whatsoever, civil and maritime. These general words are of the most comprehensive character, and include all matters which are in their nature maritime, while all those causes of which jurisdiction has been denied to the English Admiralty, are especially enumerated as admiralty and maritime causes.*

§ 162. When we look, also, to the extent of this jurisdiction, so far as place is concerned, we find it equally extensive, extending to every thing done in, upon, or by the sea, or public streams, or fresh waters, ports, rivers, creeks, and places overflowed whatsoever, within the ebbing and flowing of the sea, or high water mark, from all first, bridges toward the sea."

§ 163. So far as persons are concerned, it is also equally exten-

The same to Benj. Fletcher, commission as Vice-Admiral of New York, East and West New Jersey, New Castle and dependencies, dated 1693.

William III., to the Earl of Bellamont, commission of Vice-Admiral of New York, Massachusetts Bay, New Hampshire and dependencies, 1698.

Commission of Roger Mompesson, Judge of the Court of Vice-Admiralty in Massachusetts Bay, New Hampshire, Connecticut, Rhode Island, the Jerseys, New York and Pennsylvania, and dependencies, April 1, 1703.

George I., to Francis Harrison, commission as Judge of the Court of Vice-Admiralty of New York, 13th February, 1721.

George II., to Lewis Morris, commission as Judge of the Vice-Admiralty Courts of New York, Connecticut, and East and West Jerseys, 16th January, 1738.

* *Ante*, §§ 48-50, 126, 127, 151, 158; 1 Black. Com. 106, 107, 108.

¹⁰ *Ante*, §§ 26, 51, 158.

sive, embracing all demands and affairs between merchants, or merchants and owners of ships or other vessels, and other persons whomsoever, for any matter, cause or thing, business, or injury whatsoever, done as well in, upon, or by the sea, or public streams, or fresh water, ports, rivers, creeks, and places overflowed whatsoever, within the ebbing and flowing of the sea, or high water-mark, as upon any of the shores or banks adjoining to them. This plainly embraces all classes of persons having any relation to maritime transactions; those who build and furnish vessels; those who equip, man and, supply them; those who load and unload them; those who freight them; those who are employed in their service, to navigate or to preserve them, or to perform the various functions necessary or convenient to be performed, to enable the vessel in the best manner to answer the purposes to which she is devoted; and also those who injure her, or violate their duty or obligations to her, — a jurisdiction, to all intents and purposes, equal to that claimed by the admiralty, and set forth in so much detail by Dr. Godolphin. Indeed, it is not possible for the English language to make the grant clearer, or broader, or stronger."

§ 164. These commissions were issued and acted under, in their widest interpretation, during the whole period of colonial government, here and elsewhere. The actual business of the vice-admiralty courts, as shown by their records, up to the time of the Revolution, shows that this extended jurisdiction was not dormant, but active."

§ 165. It has indeed been said, that this extensive jurisdiction of the admiralty in the colonies was the subject of complaint at the time of the Revolution; and it is undoubtedly true, that the extension of the admiralty jurisdiction beyond its ancient limits was, in some petitions and public documents, stated as one of the grievances of the colonies. The difficulty with the mother country grew out of the imposition of taxes, and the collection of revenue; and the whole of that jurisdiction was given to the admiralty, as

¹¹ *Ante*, §§ 126, 151, 158, 104-107.

¹² Stokes' Const. of the Colonies, 270; Dunlap's Ad. Prac. 35, 37; The Tilton, 5 Mason R. 472.

was also trespass on the king's lands, and other matters which were peculiarly offensive. "It was ordained," says the old Congress in their list of grievances, "that whenever offences should be committed in the colonies, against particular acts imposing duties and restrictions upon trade, the prosecutor might bring his action for the penalties in the Court of Admiralty." These were in no sense admiralty and maritime cases, and it was this recent extension beyond the ancient limits—the limits of those commissions—of which the colonists complained, and not the proper exercise of admiralty and maritime jurisdiction which had been practised from the earliest times; and the fact that the constitution uses the words *all* cases of admiralty and maritime jurisdiction, taken in connection with those complaints, shows that the convention intended that the word *all* as well as the word *maritime* should have its proper signification."

¹³ *Waring v. Clarke*, 5 How. 456; *id.* 484.

CHAPTER X.

THE JURISDICTION OF THE STATE COURTS OF ADMIRALTY.

§ 166. AT the time of the Revolution each state assumed for itself all the powers of sovereignty, including all judicial powers in their greatest plenitude, except so far as they were limited by the Articles of Confederation. In some of the states in which an admiralty court had previously existed, the court was retained, the judge being appointed by the newly constituted state, by a simple commission, as Judge of the Court of Admiralty. No statute had specified his powers, and his commission was silent on the subject. He was appointed to exercise the same powers as the colonial courts had exercised. Such were Massachusetts and New York. In some of the states, as in New York, the statute 15 Rich. II. was enacted, and in others the jurisdiction remained unchanged. Thus, in different states, the constitutions of the admiralty courts and the limits of the admiralty jurisdiction were widely different. In some of them the court was abolished altogether; and in others new courts were established with powers regulated by statute.¹

§ 167. In Pennsylvania, an act for establishing a court of admiralty was passed Sept. 9, 1778, and another for regulating and establishing admiralty jurisdiction, in March, 1780. By this latter act, it was enacted that the judge should "hold a Court of Admiralty, and therein have cognizance of all controversies, suits and pleas of maritime jurisdiction, not cognizable at the common law, offences and crimes other than contempts against said court only excepted, and thereupon shall pass sentence and decree according as the maritime law and the law of nations, and the laws of this commonwealth shall require."

¹ *Ante*, § 24; 1 Greenl. Laws of N. Y. 11, 18, 150, 152, 338.

By section 22, it was enacted that "all and every, the proceedings of the court of admiralty of this commonwealth, shall be liable to the prohibition of the Supreme Court of Judicature in like manner, and with like effect as the prohibition of the Court of King's Bench in England, in like cases."²

§ 168. In New Jersey, an act regulating and establishing admiralty jurisdiction, was passed in 1781, which provided that the Judge of the Admiralty should "hold a Court of Admiralty, and therein have cognizance in all cases of prize capture and re-capture upon the water, from enemies, or by way of reprisal, or from pirates, and in general of all controversies, suits and pleas of Maritime Jurisdiction, and thereupon the said Judge shall pass sentence and decree according to the maritime law and the law of nations, and the ordinances of the Honorable, the Congress of the United States of America, and the laws of this State."

The second section provided that all causes should be tried by a jury. The 20th section established the same rule as to prohibitions as the Pennsylvania act.³

§ 169. In Maryland, a court of admiralty was established in 1776, for the trial of captures and seizures, with full power to take cognizance of all libels on account of such captures and seizures and to proceed to a final determination, and decree thereupon. . . . "The process and proceeding to be as usual in courts of admiralty, but if either party demand a jury on any material controverted fact," a jury was to be summoned.⁴

§ 170. Virginia passed an act in 1779, as follows:—

Be it enacted by the General Assembly, the Court of Admiralty to consist of three judges, two of whom are declared to be a sufficient number to constitute a court, "shall have jurisdiction of all maritime causes, except those wherein parties may be accused of capital offences, now depending and hereafter to be brought before them." It was expressly provided that such court, was to be "governed in their proceedings and decisions by the regulations of

² Laws of Pennsylvania, 1778.

³ Laws of New Jersey, 1781.

⁴ Laws of Maryland, 1776.

the Congress of the United States of America; by the acts of the general assembly; by the *laws of Oleron and the Rhodian and Imperial Laws, so far as they have been heretofore observed in the English Courts of Admiralty; and by the laws of nature and nations*,"—a wide and beneficial jurisdiction. No one can fail to observe how distinctly the ancient ordinances and maritime laws, the civil law, and the former practices of the English Admiralty, are adopted instead of the narrow limit observed by the English Admiralty at that time.⁴

§ 171. These being the only states whose early statutes were conveniently accessible to me, I have considered these references sufficient fully to establish that diversity which could hardly fail to exist in twelve different states, which, although friendly and united for certain purposes, were, nevertheless, independent of, and foreign to, each other.

With this diversity existing, it could hardly be contended that the phrase, *all cases of admiralty and maritime jurisdiction*, was to include only the cases so-called in some particular state which was not pointed out, much less to perpetuate in each state its peculiar law of admiralty jurisdiction; thus making diversity instead of uniformity of admiralty jurisdiction, a portion of our organic law, and requiring the constitutional grant to the general government to receive a different construction in the different states. Such a state of things must have made the judicial system of the United States entirely impracticable. In this view of the state courts of admiralty, the grant must have been intended to embrace a general maritime jurisdiction.

If all the states, before the adoption of the constitution, had re-enacted the statute 15 Rich. II., it is not perceived how it could have had any influence on the construction of the constitution. If the states, without exception, had abolished their courts of admiralty, and swept away all their admiralty and maritime jurisdiction before the constitution was framed, such legislation, instead of rendering useless or nugatory the grant in question, would only have rendered it so much the more necessary. And on the

⁴ *Laws of 1779*, chap. 27; 10 Hen. Stat. 98; *Waring v. Clarke*, 5 How. 474; *The Tilton*, 5 Mason. R. 472; *Dunlap's Pr.* 36.

same principle, any modification or limitation of the state jurisdiction, would have no effect on the construction of the constitutional grant. Cases of a certain class would be still maritime cases, and it would be none the less important that they should be subject to the Federal judiciary, to secure that equal administration of the maritime law, and that uniformity and nationality of decision under it, which would promote the harmony of the commercial world, of which the states formed an important part. And it would be none the less certain that a grant to the general government of jurisdiction in all such cases, would make them all subjects of national jurisdiction, to be distributed to such courts, and proceeded with *in rem* or *in personam*, with or without a jury, in such manner as Congress should provide.*

* *Martin v. Hunter's Lessee*, 1 Wheat. 324-5; *Waring v. Clarke*, 5 How. 461
New Jersey Steam Nav. Co. v. Merchants' Bank, 6 id. 385.

CHAPTER XI.

THE ADMIRALTY AND MARITIME JURISDICTION OF FRANCE AND
OTHER PORTIONS OF CONTINENTAL EUROPE.

§ 172. THE marine ordinances of France have always been held in deservedly high estimation. Her wisest statesmen and monarchs have all along, through many centuries, given the most profound attention to the subject of maritime law; and, under the administration of courts of admiralty, filled by the ablest judges, a system of maritime law has been there built up more perfectly than in any other country; while at the same time, commentators and juriconsults of most various learning, and most profound and practical reflection, have been the cause and the effect of this constant attention to the best interests of maritime commerce. Cleirac says the marine ordinances of France are of the highest authority, and that all the princes and republics of Europe, on the ocean, have adopted or followed them, and that they are general, and as such observed by all Christian Europe, and are also conformed to the Roman civil law and the customs of the Mediterranean Sea. They are thus by this great authority declared to be a part of the general maritime law.¹

The jurisdiction of the French Admiralty has always been of the widest and most salutary character.

§ 173. "The judges of the Admiralty," says the ordinance "shall take cognizance, preferably to all others, and between all persons of whatever quality or condition, even though privileged, French and strangers, as well in demanding as defending, of all that concerns the construction, tackle and furniture, arming, victualling, and manning, sale and adjudication of ships.

¹ Ord. de la Marine, tit. 2, arts. 1-11; Merville Com. 13-25; 1 Valin, 112-151; Cleirac, Les Us' et Coutumes de la Mer, Jurisdiction de la Marine, 316

"We declare them competent judges of all actions, proceeding from charter parties, freighting, bills of lading, freight, engaging and wages of seamen, and victuals furnished to them by order of the master during the manning of ships, together with policies of insurance and obligations of bottomry, and on the return of a voyage, and generally of all contracts concerning the commerce of the sea, notwithstanding all submissions to the contrary."

§ 174. "They shall likewise take cognizance of prizes taken at sea, wrecks, shipwrecks, and stranded ships, of jettison and contributing average, and damages happened to ships and their lading, and also of inventories and deliverances of assets, left in ships by persons dying at sea.

"They shall likewise take cognizance of the dues for licences thirds, tenths, sea marks, anchorage and others belonging to the Admiral, and of those which shall be levied or pretended by the lords of manors, or other particular persons near the sea, upon the fisheries or fish, and upon goods or ships going out or coming into port.

"The cognizance of fishing in the sea and salt water, and the mouths of rivers shall likewise belong to them, and likewise that of parks and fisheries; and they shall also take cognizance of nets and threads, and of the buying and selling of fish upon the shore, or in the boats, ports, or harbors.

§ 175. "They shall likewise take cognizance of damages done by ships to the fisheries, either upon the coasts or in navigable rivers, and of those that the ships shall receive, and likewise of the ways appointed for hauling up ships coming from the sea, if there be no regulation, title or possession to the contrary.

"They shall also take cognizance of the damages done to the keys, banks, moles, palisadoes, and other works cast up, against the violence of the sea, and shall take care that the depth of the ports and roads be preserved and kept clean.

"They shall take up the bodies of drowned persons, and shall draw up a verbal process of the condition of the corpses found at

¹ This and the following three sections are a translation of the jurisdictional articles of the *Ordonnance de la Marine*, tit. 2, arts. 1-11.

sea and on the sand, or in the ports, as likewise of the drowning of mariners sailing in navigable rivers.

§ 176. "They shall assist at the musters and reviews of the inhabitants of the parishes subject to the sea watch, and shall take cognizance of all differences arising upon that account, and likewise of crimes committed by them that are upon the guard of the coasts, while they are under arms.

"They shall also take cognizance of piracies and robberies, and desertions of seamen, and generally of all crimes and offences committed upon the sea, or coasts, and in the ports and harbours."

§ 177. These various codes and systems cannot but have been familiar to the framers of the constitution; and, for the purpose of this treatise, it is not necessary to inquire further into the jurisdiction of the admirals, or of the admiralty courts of the various commercial nations of the world. They will be found to differ considerably in the mere admiralty law,—the maritime regulations of the municipal code; but there will be found, also, a great uniformity in their adoption of those principles and rules which constitute the general maritime law. Those which have been referred to, show the same difference in municipal regulation, and the same uniformity in general principles, which would appear on a more extended examination. A brief list of them is here given for the double purpose of showing the universality of maritime codification in commercial nations, and of directing the student to the numerous and cognate sources of the maritime laws.

§ 178. Some of them are actual legislative enactments, others the ordinances of monarchs, and others are mere compilations, made up of extracts from well-known ancient codes and ordinances. Others again, are mere essays and treatises on maritime subjects, which, in consequence of their practical wisdom, have, by

¹ Ord. de la Marine, tit. 2, arts. 1-11. In the third part of the "*Us et Coutumes de la Mer*," Cleirac, in his learned and curious treatise, "*La Jurisdiction de la Marine ou de l'Admirautie*," has extracted and collected the text of the royal ordinances of the Admiralty of France, from the earliest periods. Cleirac, 316.

long use and authority, come to be considered the highest evidence of marine law; and others are the voluntary regulations which persons interested in shipping have adopted for their own convenience; and which, in like manner, have ripened into law. They are to be found in the great work of Pardessus, in which he has collected the maritime laws of all commercial nations, and preceded each by a historical notice, valuable for the combined results of thorough historical and antiquarian research, careful and ingenious criticism, as well as liberal and generous views of the true end and proper extent of the maritime law.⁴

§ 179. *The Maritime Law of the Rhodians.*⁵—This is the most ancient code of maritime law. It was promulgated about nine hundred years before the Christian era, and about seventy years after the time of Solomon. These laws being founded upon natural justice, entered largely into the maritime legislation of all the commercial nations of antiquity, of whose laws we have any knowledge. They were generally received in the Mediterranean, and Greece and Rome acknowledged their authority. In the time of Julius Cæsar and of Augustus, the distinguished juriconsults, Ofilius, Labeo, and Labinus, adopted them, especially in cases of jettison; and the Emperors Claudius, Vespasian, Trajan, Adrian, and Antoninus, confirmed those laws, and directed that all cases of maritime commerce should be decided according to them.⁶

§ 180. *The Maritime Laws of the Kingdom of Jerusalem.*—These laws date back to the existence of the Christian Kingdom of Jerusalem, established after the capture of the Holy City by Godfrey de Bouillon, in the first Crusade.⁷

§ 181. *The Roolles or Judgments of Oleron*, commonly called the Laws of Oleron, take their name from the Island of Oleron. The English and French have long disputed the honor of having

⁴ Pardessus Loix. Maritimes, *passim*.

⁵ Sea Laws, 76, 78; 1 Pard. Loix. Mar. 231.

⁶ Encyc. de Jurisp., art Rhodien; 1 Boulay Paty, tit. prel. §§ 1-6; 2 Brow. Civ. and Ad. Law, 38; 3 Kent's Com. 1-21.

⁷ 1 Pard. 275.

produced these laws, and their real origin is undoubtedly obscured by a remote antiquity ; but, by common consent, they are admitted to be the foundation of all the European maritime codes. The earliest French edition to which Pardessus refers, published in 1485, bears for a title, "*Jugemens de la Mèr, des Maisters, des Mariniers, des Marchants, et de tout leur estre,*" a literal translation of which is the title of the earliest English edition, published in the reign of Henry VIII. — "Judgment of the Sea, of Masters, of Mariners, and Merchants, and all their doings." *

§ 182. *Les Jugemens de Damme ou Lois de Westcapelle*.—These are mainly a translation of the Laws of Oleron, made for Dam, a city of Austrian-Flanders, situated a short distance from the sea, near to Bruges.*

Coutumes d'Amsterdam, Enchuyzen and Stavern.—These also, were substantially translated from the Laws of Oleron, and they were entitled, "*Ordonnance que les patrons et les negocians observent entre eux sur le droit Maritime.*" **

Maritime laws of the Low Countries. **

§ 183. *Laws of Wisbuy*.—Wisbuy, in the island of Gothland, was the great maritime and commercial entrepot of the north of Europe, more than five hundred years ago, and her maritime code was then known as "*Dat hogeste und dat oldeste water rechte van Wisby.*" "*The ancient and supreme water law of Wisby.*" "*The Gothland water law established by the merchants and masters.*" **

§ 184. *Le Consulat de la Mer. Il Consolato del Mare. The Consulate of the Sea*.—Grotius says that the Consulate was made up of various enactments of the Greek Emperors of Germany, of the kingdoms of France, of Spain, of Syria, of Cyprus, of Majorca, and of the republics of Venice and Genoa.

* Frynne, 107; Sea Laws, 116, 120; Cleirac, 1, 7; Malynes, Pet. Ad. Dec. Append.; 1 Pardessus Loix. Mar. 283, 323; Brow. Civ. and Ad. Law, 39; Miegé, Anc. Sea Laws; 1 Boucher Consulat, chap. 18 to 27.

* 1 Pard. Loix. Mar. 371.

** 1 Pardessus Loix. Mar. 405.

** 4 Pard. Loix. Mar. 1, 19, 185.

** 2 Brow. Civ. and Ad. 39; 1 Pard. Loix. Mar. 424, 463; Sea Laws, 174; Cleirac, 136, 139, 463, 524; Malynes, Pet. Ad. Dec. Append.; Miegé, Anc. Sea Laws; 1 Boucher Cons. chap. 21 to 27.

In an Italian edition, printed at Venice in 1539, it has this title, according to Pardessus: "*Libro de consolato nuovamente stampato a ricoretto nel quale sono scritti capitoli a statuti e buone ordinationi, che le antichi ordinerono per li casi de mercantie et di mari et mercante et marinari et patroni di navilio.*"¹³

"*Ici commence le livre du consulat, nouvellement corrigé et imprimé, dans lequel sont contenus les loix et les ordonnances sur les actes maritimes et mercantiles.*"¹⁴

§ 185. *Le Guidon de la Mer*.—This is an ancient treatise entitled "*Le Guidon pour ceux que font marchandize et qui mettent à la Mer;*" written in French for the use of the merchants of Rouen. It is devoted mainly to the law of maritime insurance, but Cleirac declares that it is written with such consummate ability that, in explaining the contract of insurance, the author has completely elucidated the whole subject of maritime contracts and naval commerce. It is a work of the highest authority.¹⁵

§ 186. *The Laws of the Hanse Towns*.—In the year 1254, Lubec, Brunswick, Dantzic, and Cologne, in Germany, and, subsequently, Bruges in Flanders, London in England, and Novogorod in Russia, and the principal cities of the Rhine and other portions of Europe, constituted a sort of maritime confederacy, for the protection and promotion of their commercial interests; and, for that purpose, about the year 1597, formed a code of maritime law of the greatest respectability, embracing in its brief articles, much of what had before existed in the separate codes of the Hanseatic and other cities, and of the nations of Europe.

This code may be found in 3 Pard. 431, 455; Miegé's *Anc. Sea Laws*; Brow. *Civ. and Ad.* 39; 3 Kent's *Com.* 1-21; Cleirac, 157, 166; Pet. *Ad. Dec. Append.*; *Sea Laws*, 190, 195.

§ 187. The other maritime ordinances and codes which had existed before that time, were numerous, and are here briefly enumer-

¹³ 2 Pard. 1, 49; Grotius *de Jur. Bel. & Par. lib.* 3, chap. — note 4; 5 Pard. *Loix. Mar.* 11.

¹⁴ 2 Boucher *Consulat*, I, title.

¹⁵ 2 Pard. *Loix. Mar.* 369, 377; Cleirac, 181; 2 Brow. *Civ. and Ad.* 41.

ated, in the order in which maritime legislation or codification was commenced in each nation or city.

- A. D. 940. The Maritime Law of Norway. 3 Pard. 1, 21.
- “ 1063. Maritime Law of the Two Sicilies. 5 Pard. 214, 237.
- “ 1117. Maritime Law of Iceland. 3 Pard. 45, 55.
- “ 1150. Maritime Law of Denmark. 3 Pard. 205, 229.
- “ 1158. Maritime Law of Lubec. 3 Pard. 391, 399.
- “ 1160. Maritime Law of Pisa and Florence. 4 Pard. 545, 569.
- “ 1224. Maritime Law of the Prussian States. 3 Pard. 447, 459.
- “ 1232. Maritime Law of Venice and Austria. 5 Pard. 1.
- “ 1243. Maritime Law of Catalonia, Aragon, Valence, and Majorca. 5 Pard. 321, 333.
- “ 1254. Maritime Law of Sweden. 3 Pard. 89, 111.
- “ 1270. Maritime Law of Hamburgh. 3 Pard. 329, 337.
- “ 1270. Maritime Law of Russia. 3 Pard. 489, 505.
- “ 1303. Maritime Law of Bremen. 3 Pard. 309, 317.
- “ “ Maritime Law of the Papal States. 5 Pard. 99, 113.
- “ 1316. Maritime Law of Genoa. 5 Pard. 419, 439.
- “ “ Maritime Law of Sardinia. 5 Pard. 267, 281.

CHAPTER XII.

"ADMIRALTY" AND "MARITIME."

§ 188. In the foregoing brief review of the admiralty and maritime jurisdiction of the different portions of the British Empire of the original states of our union, and of the nations of continental Europe, it has been shown that admiralty and maritime cases consist of many very numerous classes of cases, everywhere distinctly characterized by their relation to ships and shipping; that of these numerous and various cases, the English Admiralty Court, at the time of the American Revolution, entertained jurisdiction of but very few, the Admiralty Courts of Scotland still more, the British Colonial Courts of Vice-Admiralty still more, the early English Admiralty still more, the French Admiralty Courts, and those of other continental nations, still more; that the extent and the character of these various jurisdictions were plainly set forth in legal works, which were well-known evidences of the law, when our constitution gave to the Federal Government jurisdiction of all cases of admiralty and maritime jurisdiction. With these various jurisdictions to choose from, if any one of them was to be adopted, it is hardly rational to suppose that that one would not have been specified, or in some manner indicated. If no intention, as to the extent and jurisdiction, had been indicated, it would be evident that the matter was to be left to Congress; but it was important, in a national point of view, that all uncertainty should be removed, and the broadest grant was, therefore, made, of *all* cases.

§ 189. It has been stated in another place, that the English language is the only link that connects the laws and institutions of the United States with those of Great Britain; and that to the English law, and to English dictionaries we must resort for the meaning of

the words used in the constitution. If we bring the admiralty and maritime grant in the constitution to this test, we shall find that the words *admiralty* and *maritime* then had, as they now have, a well established signification, entirely in harmony with their use by the great civilians who made the admiralty and maritime jurisdiction the study of their lives.¹

ADMIRALTY.—A court having cognizance in all maritime affairs, civil as well as criminal. MARITIME.—Relating to the sea; marine.

Johnson's Dict. edit. 1755; Barclay's Dict.; Webster's Dict.; Falconer's Maritime Dict.; Cowell's Law Dict.; Cunningham's Law Dict.; Bell's Law Dict.; Bouvier's Law Dict.

§ 190. It will be seen, also, that the words *admiralty* and *maritime* are of constant occurrence in the works of the jurists of Holland and Spain, as well as those of England, Scotland, and France; and that those words have thus acquired an established signification, of which the framers of the constitution cannot be supposed to have been ignorant. Nor can they be presumed to have used them in any narrower sense than that in which they have been used for centuries by the whole commercial world. On general principles, it cannot be presumed that they were used in any local or merely municipal sense. The fact that the Admiralty Court of England was not permitted by the King's Bench to exercise jurisdiction in all admiralty and maritime cases, but was confined to a very few,—the residue being monopolized by the common law courts,—can in no manner affect the proper force and signification of those words. Common respect for the wisdom of our ancestors, prevents us from believing that so paltry a class of cases as those which were left to the English Admiralty at the time of our Revolution, was deemed by them necessary to be embraced in the national constitution, as unsafe to be trusted to the states, or of sufficient importance, in a national point of view, to be solemnly granted to the national judiciary.

They do not rise to the respectability of a class of cases, nor

¹ *Ante*, § 32; *post*, § 191.

have they any national character, or general commercial importance, to distinguish them from the great mass of admiralty and maritime cases; nor have I been able to imagine any reason whatever, why those cases alone should have been transferred to the general government; nor have I ever met with even an alleged reason, for supposing that they were transferred to the general government, because the English Court of Admiralty entertained jurisdiction of them. It must have been for a higher, more patriotic, and more national reason, that the states surrendered the whole subject to the Federal Government.*

§ 191. If we examine the etymology, or received use of the words *admiralty* and *maritime jurisdiction*, we shall find that they include the judicial jurisdiction of the admiral, and of all maritime causes, or causes arising from things done upon and relating to the sea; or, in other words, all transactions and proceedings relative to commerce and navigation, and to damages or injuries upon the sea, or navigable waters of the nation, or upon the high sea. In the maritime codes, and the commentaries upon them, as well as in the writings of the greatest jurists, in all the great maritime nations of Europe, the term *admiralty jurisdiction* is uniformly applied to the courts exercising jurisdiction over maritime contracts and concerns, and administering the general maritime law. The judges of the common law courts in England, in a spirit which has been alluded to, use it in a narrower sense; but the distinguished men who practised and presided in the admiralty, and who made such subjects their peculiar study, always gave to those words their wider and more appropriate signification; and there was no superior sanctity in the decisions at common law, upon the subject of the jurisdiction of those courts, which should entitle them to outweigh the very able and learned decisions of the great civilians of the admiralty. In seeking for the proper meaning of those words, even in England, where could we so properly search for information on the subject as in the works of those

* *Ante*, §§ 4, 5, 38, 39, 40; *De Lovio v. Boit*, 2 Gall. 468; *Waring v. Clarke*, 5 How. 451-457; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 385; *ante*, §§ 27, 28.

jurists who have adorned the Court of Admiralty from age to age, and made its jurisdiction the pride and study of their lives.*

§ 192. It has been before remarked that the constitution was formed after twelve years of actual independent nationality, under the confederation; that the United States Government can, in no proper sense, be called an offshoot from that of Great Britain; that the existence of Great Britain is not alluded to in the constitution, much less are any of her institutions adopted as the patterns or originals of our own. Hence, if the jurisdiction of the British Admiralty Courts—English, ancient and modern, Scotch, Colonial—had been always and everywhere the same, still a grant of jurisdiction over *all* admiralty and maritime cases could, on no rational principles, be construed as meaning, not all cases, but only such cases as one court of one nation had, by another court of the same nation, been permitted to take jurisdiction of, for merely municipal reasons. Surely, if any British court was to furnish the rule of our admiralty jurisdiction, it would be the colonial courts, whose jurisdiction was of the most extended character, as fully set forth in their written commissions.⁴

* *Ante*, §§ 38, 39, 40, 41; *De Lovio v. Boit*, 2 Gall. 469.

⁴ *Ante*, §§ 30, 31, 125, 126, 127, 151, 158.

CHAPTER XIII.

TRIAL BY JURY — SUITS AT COMMON LAW — SUITS IN PERSONAM —
COMMERCE.

§ 193. It has been sometimes said that the sixth and seventh amendments to the constitution, securing the right of trial by jury, have the effect to restrict the general grant in the constitution, for the reason that in admiralty courts, causes are usually determined by the court without the aid of a jury. "Depriving us, in many cases, of the benefit of trial by jury," was one of the grievances enumerated in the Declaration of Independence; and the trial by jury has always been, to the American People, an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy. The right to it is secured by all the state constitutions, and the want of such an express security in the Constitution of the United States, was one of the strongest objections taken against its adoption. To meet the public feeling on this subject, the sixth and seventh amendments to that instrument were adopted in these words:—¹

(6.) "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state or district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

(7.) "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

§ 194. Able jurists have contended, that, in this view, the admiralty jurisdiction should be considered as restricted, rather than ex-

¹ *Parsons v. Bedford*, 3 Pet. R. 446.

tended, by the frame of our judicial system. The most careful reflection, however, has not enabled me to perceive how the question of the jurisdiction of the admiralty is, in the remotest degree, affected by these provisions. The sixth amendment is expressly limited to criminal prosecutions, for crimes committed in some state or district of the United States. It would, therefore, hardly extend to crimes committed on the high seas, which would alone be the subject of admiralty jurisdiction; and if it could, there is nothing to prevent Congress from doing, what they have long since done, and what the British Parliament had done before them, — provide by law that the trial of maritime crimes in the Admiralty, shall be by jury.³

§ 195. So the seventh amendment is limited to suits at common law, which does not include either suits in equity, or of admiralty and maritime jurisdiction.⁴

§ 196. Indeed it seems quite plain, that while the people had the subject before them, fresh from the discussions in relation to the constitution itself, they intended to confine the constitutional necessity for jury trials, to crimes committed within the territorial limits of the United States, and to suits at common law, but to leave it to the wisdom of Congress to decide, whether the jurisdiction over transactions, so peculiar as those of the sea, should be exercised only by judges, schooled in the principles and mysteries of such transactions, as had been done in all ages and nations before, or should be left to the uncertain chances of juries, familiar only with the usages and necessities of the land. Congress wisely gave to maritime offences a jury, but as wisely decided that in causes, civil and maritime, the court should decide the fact, as well as the law.⁵

§ 197. The question whether any particular court has jurisdiction, or whether a particular cause be within the judicial cogni-

³ *Waring v. Clarke*, 5 Howard, 450, 493; *Edw. Ad. Jur.* 153; 4 *Black. Com.* 268; 5 *U. S. Stat. at Large*, 726; *Conk. Ad. Jur. and Prac.* 7.

⁴ *Parsons v. Bedford*, 3 *Pet.* 446-7.

⁵ *Waring v. Clarke*, 5 *How.* 441, 492-4.

zance of the general government, is totally different from any question of the manner in which the court shall proceed; and if Congress should now pass a law, that the trial of all causes in the courts of the United States, should be by jury, it would not in the slightest degree change or modify the jurisdiction of those courts, nor interfere with the grant to the Federal Government. This will be readily perceived, by recurring to the ninth section of the judiciary act, giving jurisdiction to District Courts, the last clause of which provides that "the trial of issues of fact in the District Courts in all cases except civil cases of admiralty and maritime jurisdiction, shall be by jury." Had the exception been omitted, admiralty and maritime cases would have been triable by jury, like all other cases, but the jurisdiction would not have been changed. In some of the state courts of admiralty all causes were tried by a jury.*

§ 198. The phrase "suits at common law," in the seventh amendment to the constitution, has also been made the foundation of an objection to the admiralty jurisdiction in all these cases, which, in England, at the time of the Revolution, could not be tried in the Court of Admiralty, but must be brought in the courts of common law,—an objection which seems to have been first raised by the late Judge Baldwin, in the case of *Bains v. The Schr. James and Catharine*.⁶

§ 199. The cases brought by the constitution within the judicial power of the United States, are subject to two classifications; the first, as to the subject-matter of the jurisdiction, and the second as to the mode of proceeding. Under the head of jurisdiction they are of four general classes: 1st. Cases of every description in law and equity, arising under the constitution, laws and treaties of the United States,—a jurisdiction necessary to enable the United States to execute and enforce its own laws. 2d. Cases of every description affecting ambassadors, other public ministers and consuls,—a provision obviously necessary to enable the Government of the United States to regulate its intercourse with foreign nations, and

* *Waring v. Clarke*, 5 How. 459; *ante*, §§ 168, 169; *The Genesee Chief v. Fitzhugh*, 12 How. 459.

⁶ *Bains v. The James and Catharine*, Bald. 544.

to secure the dispensing of justice to the agents of that intercourse. 3d. To all cases of admiralty and maritime jurisdiction,—a provision necessary to enable the general government to administer that branch of the law known as the admiralty and maritime law,—embracing the system of laws, which regulate the rights and duties of those engaged in maritime affairs, or doing business on navigable waters which constitute the highways of nations. 4th. To controversies between citizens of different states, &c.—a provision necessary to secure a due administration of justice, in cases in which national prejudices, state pride or state interest might influence the decision of the state tribunals. This classification relates entirely to the jurisdiction, so far as it depends upon the subject-matter.⁷

§ 200. The other classification is entirely independent of the question of jurisdiction, and depends solely upon the mode of proceeding, and embraces three classes; viz., common law cases, equity cases, and admiralty and maritime cases. These classes include all judicial cases. By cases at common law, are meant cases in which legal rights, duties, and offences are to be ascertained in courts of law. By cases in equity, are meant cases in which equitable rights and duties are to be ascertained, in courts of equitable jurisdiction and proceeding; and by admiralty and maritime cases, are meant cases in which maritime rights, duties, and offences become the subject of judicial cognizance in courts of admiralty and maritime jurisdiction.⁸

§ 201. Each of these courts has its own system of legal principles, and its own practice, or course of procedure; so that a suit at law, a suit in equity, and a suit in admiralty, can hardly be said to resemble each other. It is not, however, to be understood, that the same substantial claim may not be a matter of controversy in courts of either class. A claim for mariners' wages may be prosecuted in a court of law, and it is then a case, or suit at common law; and it is to be settled according to the rules which govern the court in which it is prosecuted. The same demand may, also, by the necessity of a discovery, or of an injunction, or by the

⁷ *Ante*, § 27.

⁸ *Ante*, § 27; *Parsons v. Bedford*, 3 Pet. 446; *Waring v. Clarke*, 5 How. 460.

intervention of trustees, be brought within the range of equitable jurisdiction: it then becomes a case in equity, and the rules of that course of procedure must be applied to it. Or the same claim may seek its more usual and appropriate forum, a court of admiralty; in which case, it is to be disposed of according to the course of admiralty courts. The constitution nowhere provides what cases shall be within the one, or the other class, nor what shall be the steps of proceeding. That is left to be settled by the courts, according to the established principles of judicial procedure, subject to the restrictions in the sixth and seventh amendments of the constitution, which provide that in all criminal prosecutions, and in suits in common law courts, involving more than twenty dollars, the right of trial by jury shall be preserved.*

§ 202. The fact that the constitution provides only that all crimes shall be tried by a jury, and that, in all suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and omits to include in the same provision admiralty and maritime civil cases, and cases in equity, shows that it was not intended to include them, and that the proper force of the seventh amendment is, that, in all cases, except equity and admiralty cases, the parties shall have the right to a trial by jury, if they demand it.¹⁰

§ 203. In *Bains v. The Schr. James and Catharine*, the learned judge seems to have overlooked the distinction between the constitution and the acts of Congress, as well as the difference between the course of proceeding and the fundamental law of jurisdiction. The limit and extent of the judicial power of the United States are fixed by the constitution, which is inflexible and above the power of Congress, while the mode of exercising that jurisdiction, the organization of the courts, and the course of procedure, are prescribed by the acts of Congress, and are subject to be al-

* *Parsons v. Bedford*, 3 Pet. 446; *Blad. v. Bamfield*, 3 Swan. 605; *Rex v. Carew*, id. 670; *The King v. Carew*, 1 Vernon, 54; *Nicol v. Goodall*, 10 Ves. 155; *Parker v. Toulmin*, 1 Cox, Chan. Cases, 264; *Duncan v. McCalmont*, 3 Beav. 409; *Anonymous*, 12 Mod. 16; *The Belfast*, 7 Wall, 643.

¹⁰ 12 *The Genesee Chief*, 12 How. 460.

tered, modified, or repealed at the pleasure of the national legislature, which may at any time enact, that all cases of admiralty and maritime jurisdiction shall be tried by a jury. The forum would, nevertheless, remain the same."¹¹

§ 204. It is not uncommon in the reports to find counsel, and even judges, insisting that the court has not jurisdiction in a particular maritime cause of action *in personam*, while they admit the jurisdiction over the same cause of action *in rem*. And it has been sometimes asserted, that the admiralty courts have jurisdiction only *in rem*, or, at most, but very rarely *in personam*, and only as ancillary to the jurisdiction *in rem*. A reference to the most common books of precedents and cases, will show that in the earlier periods of admiralty practice, almost all the cases were *in personam*. This was the usual course of admiralty proceedings, and it was not considered necessary to arrest the vessel, except in cases where the owners or master were absent, or where a mere question of privilege or preference was to be decided. But the distinction between proceedings *in rem* and *in personam*, has no proper relation to the question of jurisdiction. If mariners' wages, salvage, freight, and bottomry, are maritime causes of action, then the court of admiralty has jurisdiction of them, and may use any of its appointed modes to give the party any remedy to which the law entitles him. The substratum of the action, is the liability of one party to respond to another, and the court may enforce it against the person, or against a particular portion of his property, or against his property generally, as the law may have provided the right. If the cause of action be by law, a lien upon a vessel, her cargo, freight, the proceeds of the same, or the remnants and surplus thereof, the court may enforce that lien, by a suit *in rem*, or may allow the lien to remain, and compel the party himself to pay the demand. In such cases, the question before the court, is not whether the court have jurisdiction, but whether the party have right; it is not a question in abatement, but a question of the merits of the action. "If the cause is a maritime cause, subject to admiralty cognizance, jurisdiction is complete over the person, as

¹¹ *Ante*, § 18.

well as over the ship. It must in its nature be complete, for it cannot be confined to one of the remedies on the contract, when the contract itself is within its cognizance."¹²

§ 205. It has been sometimes insisted, that the admiralty has not jurisdiction of any case of which the common law has jurisdiction. Indeed, as has been before remarked, such a rule was made a principal cause for restraining the English Admiralty Court. The jurisdiction of that court, especially extended to cases not maritime, arising beyond sea, and with foreigners. A reason given for this jurisdiction, was, that, by the common law, the courts of common law could only take cognizance of matters arising within the counties of the realm, because every fact must be averred in the pleadings, to have arisen, or happened within some particular county of England. While this strictness prevailed, it is clear that cases arising beyond sea, could not be tried in the common law courts. In process of time, however, the common law courts held the venue to be immaterial and not traversable, and hence a fictitious venue was laid, and all facts were averred to have arisen at Westminster; and then, and for that reason, they denied the jurisdiction of the admiralty, it being no longer necessary. The test of happening within, or without the body of a county, which should have been confined to cases (not necessarily maritime) alleged to have happened beyond sea, was, in process of time, applied to maritime cases happening in the close seas of England; and finally the notion came to prevail, that all cases, in which the common law gives a remedy, and in which the common law courts are easily accessible, are not within the admiralty jurisdiction. It is extraordinary that it should be contended, that no cases which might be the subject of suits at common law, should be heard in the admiralty,—since seamen's wages, and almost all the subjects of English Admiralty jurisdiction, may be prosecuted in common law courts, even in England, and such a construction would annihilate the

¹² The U. S. v. 350 Chests of Tea, 13 Wheat. 486; Dunlap Ad. Prac. 69; Bains v. The James and Catharine, Bald. C. C. R. 544; Cutler v. Rae, 7 Howard, 729; New Jersey Steam Nav. Co. v. Merchants' Bank, 6 Howard, 392; Boyd's Proceedings, *passim*; Clerke's Praxis, *passim*; Hall's Adm. *passim*; Dupont v. Vance, 19 Howard, 171.

admiralty jurisdiction in that country, and make the grant of it in our constitution quite unmeaning and nugatory."

§ 206. It has, however, with much less reason, been said, in relation to the lakes and rivers, bays and harbors in this country, that they are not within the admiralty and maritime jurisdiction, because the common law courts on the shores are conveniently accessible and competent to give relief. This must be a fallacy, if it be true that the admiralty and maritime jurisdiction is conferred upon the Federal Government, as has been before remarked, for national and international purposes, and not to supply deficiencies in the common law, nor to create a more accessible jurisdiction,—especially since the same court of the United States is at the same time a common law court and an admiralty court. This jurisdiction was made national, because, by the common consent of civilized nations, maritime transactions, on the great highways of commerce, should be subjected to the *vera lex, recta ratio*,—the equitable principles and rules of natural justice,—which, without the enactment of any legislature, are acknowledged as the general maritime law; and also, because the internal as well as external peace of the nation might be involved, and the rights of citizens of the different states might be subjected, not to a general and unbiassed tribunal, but to a local, a prejudiced, or a partial one, if the local courts should retain this class of cases.

That there are local laws, and local courts, ready, and, in their own view, competent to give redress, so far from being a reason why the admiralty jurisdiction should be excluded, is one of the strongest reasons why it should be ample and accessible. In no other way, can the maritime law be maintained or administered with uniformity and national consistency, and the equal rights of all, be preserved on the navigable waters washing the shores of different states, which are not the exclusive property of any one of them, but are common to them all."

¹² *Steele v. Thacher*, Ware, 91; *Waring v. Clarke*, 5 How. 461; *Parsons v. Bedford*, 3 Pet. 447; *The Diana*; 1 Lushington, 541.

¹⁴ *Waring v. Clarke*, 5 How. 459-495; *Federalist*, No. 83; *The Genesee Chief*, 12 How. 253; *ante*, § 17.

§ 207. Hence the constitution conferred upon the general government, the power "to regulate commerce with foreign nations, and among the several states and with the Indian tribes,"—a grant which covers the whole ground of commercial intercourse, but was accompanied by the limitations, that "no tax or duty shall be laid on articles exported from any state; no preference shall be given by any regulation of commerce, or revenue, to the ports of one state, over those of another; nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another." "All duties, imports, and excises shall be uniform throughout the United States." Subject to these limitations, the legislative power of the United States extends to all subjects of commerce with foreign nations, among the several states, and with the Indian tribes. It surely cannot be denied, that the judicial power is coextensive with the legislative power. The want of a proper judicial power to enforce the national legislation, was one of the greatest evils under the confederation."

§ 208. The wisdom of our ancestors, in laying the foundations of the republic, is in nothing more evident than in our organic regulations in relation to commerce. For all commercial purposes, we must be one people,—no protective, retaliatory, prohibitory systems of revenue, or other restriction, can ever interfere with the bonds of our nationality; perfect freedom and equality of trade and navigation among ourselves is constitutionally secure. If it had not been so, long before this time we should have been divided, weak, and antagonistic nations, the fragments of our original Union. How easy it is to perceive that our harmony may be interrupted, and our strength impaired, if each state may adopt and enforce on its half of a river, its section of a lake, its short stretch of coast, in its own ports and harbors and local waters, to which all the states have a common right of use, a system of commercial and maritime law, repealing, or conflicting with, that great system of commercial law which is known as the Admiralty and Maritime Law, and which alone, can secure those equal state rights which it was one great object of the constitution to protect."

¹⁵ Const. Art. 1, § 8, Subd. 1, 8; id, § 9, Subd. 5.

¹⁶ *Ante*, § 4.

CHAPTER XIV.

THE MARITIME LAW — MARITIME CONTRACTS.

§ 209. THE maritime law, being, not the law of any particular country, but a law common to all nations which are engaged in maritime commerce, does not rest for its character or authority on the peculiar institutions and local customs of any particular country, but consists of certain principles of equity and usages of trade which general convenience and a common sense of justice have established in all the commercial countries of the world, to regulate the dealing and intercourse of merchants and mariners, in matters relating to the sea.¹

§ 210. The general maritime law is found, broadly and fully laid down and discussed, in the works of the celebrated and learned commentators upon the maritime codes, and of other elementary writers on maritime law, such as Selden, Grotius Stracha, Bynkershoek, Valin, Stypmanus, Loccenius, Casa Regis, Emerigon, Kuricke, Pothier, Roccus, Malynes, Cleirac, Boucher, Boulay Paty, Pardessus, Vinnius, Lubeck, Targa, and many others, whose works have been the universally known and everywhere conceded evidence of the admiralty and maritime law.²

§ 211. It would swell this treatise far beyond the limits which I intend to give it, were I to attempt an analysis or synopsis of those various codes and commentaries. It will be sufficient, here, to remark, that none of them adopt any rule at all analogous to the modern English rule, as narrowed down by the prohibitions of the King's Bench. The question, whether a cause of action arose within the limits of a county, or in a harbor, — or was founded on

¹ *Ante*, § 41; The *Rovena*, Ware, 815; 3 Kent's Com. 3d edit. 1.

² 1 Boulay Paty, 96; 3 Kent's Com. 3d edit. 1-21.

an instrument, sealed or unsealed,—or made on shore or on shipboard,—in a usual, or unusual form,—appears never to have entered the minds of those legislators and jurists. They have always looked solely to the maritime nature and character of the transactions, which cannot depend upon any such considerations, and they treat of all cases of service, contract, tort, or accident relating to ships, shipping, and maritime commerce.³

§ 212. While, however, the maritime law regulates and enforces all maritime contracts, it does not take cognizance of agreements not in themselves maritime, although they may be preliminary to maritime contracts, and have a direct reference to them. Thus, a marine policy of insurance is a maritime contract; but an agreement to make a particular policy, has been held to be not a maritime contract; so that, if the agreement should be violated, and the policy should not be made, or, being made, should differ in important particulars from that agreed upon, the admiralty would not have jurisdiction of a suit for that violation, although it would entertain a suit on the policy actually made. So, too, the chartering of a ship is a maritime service, and the charter party is a contract within the cognizance of the admiralty; but a mere undertaking to make a charter party, or to procure a person to make one, is not within the jurisdiction of the admiralty.⁴ It is not a maritime contract. It is not subject to the regulation of the maritime law. The distinction in many cases will, undoubtedly, seem shadowy; still, in a large class of cases, it will be readily perceived, and its importance fully appreciated.⁵

§ 213. It is not always easy to determine what is a maritime contract. The dividing line between causes maritime and not maritime, is not always strongly marked. It is believed that a sure guide in matters of contract, is to be found in the relation which

³ 8 Pard. Loix. Mar. 451.

⁴ *Torices v. The Winged Racer*, 39 Hunt's Merch. Mag. 458; *Contra The Pacific*, 1 Blatchf. 569.

⁵ *De Lovio v. Boit*, 2 Gall. 468; *Andrews v. Essex Fire and Marine Ins. Co.*, 3 Mason, 16; *Dean v. Bates*, 2 Woodb. & M. 87; *Dunlap's Prac.* 43; *Plummer v. Webb*, 4 Mason, 380; *vide The Tribune*, 3 Sumn. 144; *Cox v. Murray*, Abb. Ad. 340.

the cause of action has to a ship, the great agent of maritime enterprise, and to the sea as a highway of commerce. Where there is navigable water, and ships and vessels, these are the subjects of the maritime law. If a case relate to a ship, or to commerce on navigable waters, then it is subject to the maritime law, and is a case of admiralty and maritime jurisdiction. The languages of those nations in which the admiralty and maritime jurisdiction has been longest acknowledged, and where the system of law which regulates maritime commerce has been most studied, furnish a brief illustration of the proper compass of the maritime law, in the significant descriptive names, which they give to it in the vernacular tongue. *Sea Laws*—*Maritime Law*—*Law of Ships and Shipping*—*Laws of Naval Trade and Commerce*—*Droit Maritime*—*Water Rechte*—*Scip Rechte*—*Scip Rechts*—*Skip Roet*—*Zee Rechten*—*Gius Nautico*—*Leggi Maritimi*—*Jus Maritimi*.* Much of which is briefly expressed in the title of the "Consulate or Agreements, statutes, and good ordinances, which the ancients established for the cases of merchants and mariners and masters of vessels."†

We find no allusion to tides, as affecting the law; no exceptions of ports or harbors, or narrow seas, or bodies of counties; or contracts in unusual form, or sealed, or unsealed, with, or without a penalty, made on land, or on shipboard. *The only question is, whether the transaction relate to ships and vessels, masters and mariners, as the agents of commerce, on great navigable waters.* "*Toutes les affaires relative à la navigation et aux navigateurs appartient au droit maritime.*"‡

§ 214. At the hazard of unnecessary repetition, I shall here bring together further evidence, consisting of extracts from documents

* *Mare*. — The sea; sometimes a great river. *Maritimus*. — Of or belonging to the sea. *Nauta*. — A sailor. *Nauticus*. — Belonging to ships or mariners. *Navis*. — A ship or bark; any vessel of the sea or rivers. *Navalis*. — Belonging to ships. — AINSWORTH.

† 5 Pard. 11; *ante*, § 184; *vide* Vandewater v. Mills, 19 How, 82; Ward v. Thompson, 22 id. 330; Waterbury v. Myrick, Blatchf. & H. 34; Plummer v. Webb, 4 Mason, 380; Alberti v. The Virginia, 2 Paine, 115; Thackarey v. The Farmer, Gilp. 526; The Canton, Sprague, 437.

‡ 3 Pard. Loix. Mar. 451; 1 Boulay Paty, 99.

which have been already referred to, and which will show the uniformity or similarity of language that has been used on this subject, in different ages and countries.

"To hold conusance of pleas, debts, bills of exchange, policies of assurance, accounts, charter parties, contractions, bills of lading, and all other contracts, which may anyways concern moneys due for freight of ships, hired and let to hire, moneys lent to be paid beyond the seas, at the hazard of the lender, and also of any cause, business, or injury whatsoever, had, or done in, or upon, or through the seas, or public rivers, or fresh water streams, havens, and places subject to overflowing whatsoever within the ebbing and flowing of the sea."*

"Also, touching all and singular other matters which concern merchants, owners, and proprietors of ships, masters, shipmen, mariners, and shipwrights."¹⁰

"Agreements, statutes, and ordinances, established by the ancients for the cases of merchants and mariners and masters of vessels."¹¹

"Laws of ships and navigators."¹²

"Judgments of the sea, of masters, of mariners, and merchants, and all their doings."¹³

"Ordinances that masters and merchants observe among themselves, in subjects of maritime law."¹⁴

"Water-law, as established by the merchants and masters."¹⁵

"Directions for those who pursue commerce and put to sea."¹⁶

"All business, civil and maritime, whatsoever, commenced, or to be commenced, between merchants, or between owners and proprietors of ships and other vessels, and merchants or others whomsoever, with such owners and proprietors of ships, and all other vessels whatsoever."¹⁷

"To take cognizance of, and proceed in all causes, civil and maritime, and in complaints, contracts, debts, exchanges, policies of assurance, accounts, charter parties, agreements, bills of lading of

* *Ante*, § 48.

¹⁰ *Ante*, § 50.

¹¹ *Ante*, § 184.

¹² 5 *Pard. Loix*. Mar. 7, 9.

¹³ *Ante*, §§ 51, 181.

¹⁴ *Ante*, § 182.

¹⁵ *Ante*, § 183.

¹⁶ *Ante*, § 185.

¹⁷ *Ante*, § 126.

ships, and all matters and contracts, which in any manner whatsoever relate to freight due for ships hired and let out, transport money, bottomry, or which are affairs between merchants, or between owners and proprietors of ships, or other vessels, and merchants, or other persons with owners and proprietors of ships and all other vessels.”¹⁸

It will be observed that these are extracts from the earliest and most authentic evidences of the maritime law, throughout the whole coast of modern civilization in Europe and America, previous to one hundred years ago; and the concurrence of all these authorities cannot fail to show that the maritime law is, and always has been, The Law of Ships and Vessels and Naval Commerce.

¹⁸ *Ante*, § 151.

CHAPTER XV.

SHIPS AND VESSELS.

§ 215. SHIP is a general term, and in the law is equivalent to *vessel*. It is defined, "a locomotive machine adapted to transportation over rivers, seas, and oceans."

"*Sub vocabulo navis omnia navigationum comprehenduntur.*
 " *Navim accipere debemus sive marinam, sive fluviatliem, sive in aliquo stagno naviget.*"¹

§ 216. Whether the old tradition, that the first idea of the canoe was suggested by a split reed floating on the water, be true, or whether the simple raft was not the first instrument of maritime locomotion and transportation, it is not necessary to inquire; nor whether the tiny sail of the nautilus, or the web-foot of the water-fowl, suggested the first means of propulsion. It is, however, certain that ships and vessels, in all their varieties of construction, and all their modes of propulsion, are but the more or less perfect combinations of the canoe and the raft, the sail and the paddle, as human ingenuity and science, in the progress of civilization and art, have removed old difficulties, and suggested new expedients, till vessels are the most perfect and wonderful productions of human art; and in all the stages of their progress, from the humble catamaran and balsa to the majestic steamer of our day, they have been the great agents of exploration and trade, and the formidable instruments of individual and national plunder, as well as of defence and legitimate conquest.²

§ 217. Questions have sometimes arisen, how far size, capacity, purpose, and mode of propulsion, must enter into the definition of

¹ Malynes, 123, 141; 1 Boulay Pat. 100, 101; 1 Pard. 97; Enc. Am. Art. Ship.

² Falconer's Dict. Art. Naval Architecture; Sea Laws, 446, 1 Molloy, 307; Falc. Dict. Catamaran.

a ship, or vessel, under the maritime law, and cases are found in the books, in which ships or vessels are denied that character, because their size was small compared with the more capacious constructions of modern times, and because they were employed in the humble occupations of agricultural or agrestic commerce. But to those structures can hardly be denied the character of ships and vessels, which, in every particular, are superior to the ships and vessels of those countries and periods in which the great codes of maritime law were promulgated and enforced; nor can it make any difference whether the vessel is propelled by the wind, the tide, or paddles; by steam, by animals, or by the human arm; or towed by another vessel.*

§ 218. Under the name "*navis*, ship," says Malynes, "is all kind of shipping understood, and *navigium*, vessel, is a general word, many times used for any kind of navigation. So that it is not of any moment to describe the diversity of ships, as carracks, galleons, galleasses, gallies, centauries, ships of war, fly boats, busses, and all other kinds of ships and vessels." Each nation has its mode of construction, rigging, and navigation, and its peculiar kind of craft; but all are ships and vessels which are manned by a master and crew, and are devoted to the purposes of transportation and commerce, whether in the fisheries or in mere trade. A scow, a lighter, a ferry-boat, and probably a raft or timber-ship, under certain circumstances, would be held to be a ship or vessel, and subject to the same maritime law as other vessels. It is not the form, the construction, the rig, the equipment, or the means of propulsion that establishes the jurisdiction, but the purpose and business of the craft, as an instrument of naval transportation.⁴

§ 219. The statutes of the United States in various cases refer to the size of ships and vessels, and it must be held, that vessels of

* N. Y. Law Rep. 373; *Gibbons v. Ogden*, 9 Wheat, 217, 220; *Thackarey v. The Farmer*, Gilp. 525; *The U. S. v. Jackson*, 4 N. Y. Leg. Ob. 450; *Van Santwood v. The John B. Cole*, id. 373.

⁴ It would not be uninteresting to enter into some details of the extraordinary diversity which exists in the water craft of different nations and of different ages, nor would it fail to illustrate and enforce the remark in the text; but such an inquiry would be out of place here.

the classes described as ships and vessels in the statutes, are, for the purposes of the maritime law, ships and vessels. By the registry acts, all ships and vessels intended for the foreign trade, "whether ship, brigantine, scow, schooner, sloop, or whatever else,"^{*} must be registered and recorded; and among others are mentioned vessels not exceeding fifty tons.

§ 220. Vessels engaged in the coasting trade, "on the sea coast or on a navigable river," including ferry-boats,^{*} as well as all other vessels, must be enrolled and licensed, if they be of the burthen of five tons or upwards;[†] and they are all uniformly spoken of in the statutes, as "ships and vessels." And some of the ships of Columbus, in which he traversed an unknown ocean, on the greatest maritime enterprise of the world, — of Cortes, seeking to conquer a populous empire, — of the buccaneers, the terror of armed fleets, and of fortified cities, — were inferior in size to the small craft that carry on commerce on our smaller lakes and rivers. "The first discoverers of America committed themselves to the unknown ocean, in barks, one not above fifteen tons; Fro-bisher in two vessels of twenty or twenty-five tons; Sir Humphrey Gilbert in one of ten tons only."[‡]

§ 221. And vessels devoted especially to the humbler commerce of agricultural productions, or of the homespun fabrics of the farm, and the mechanics' shop, are, in the same manner, to be considered ships and vessels, and subject to the maritime law. It can make no difference in the principle, whether the ship or vessel be loaded with tea from Canton, coffee from Rio, cotton from Mobile, tobacco from Richmond, flour from Baltimore, coal from Liverpool or Philadelphia, onions from Wethersfield, or with pork, poultry, butter, cheese, fruits, and other articles of produce from the farms and villages between the large ports, — all these are the agricultural products of their localities. And in the same manner, silks, cashmeres, crapes, laces, and cloths from the foreign looms, and liquors from abroad, are no more cargo, or merchandise, or

^{*} 2 Bior. Laws U. S. 318, § 9.

[†] 2 Bior. Laws U. S. 337, §§ 12, 14.

[‡] Id. 334, § 4, 344, § 26.

[§] Quarterly Review.

goods, than boots and shoes, home-made clothes, cider, whiskey, wooden clocks, shoe pegs, and other coarse articles of manufacture, which often fill the sloops and schooners engaged in the coasting trade of the rivers and bays of the United States. They are the manufactures of their localities, and the vessels that carry them are the ships and vessels of the maritime law, even though they do not make the three years' voyages of Solomon to Tarshish, for "gold and silver, ivory, and apes and peacocks." The earlier, as well as the later codes of maritime law, expressly embrace the vessels employed in this class of commerce, and it is not easy to see how a doubt was ever raised on the subject.*

A question has been raised as to whether canals and canal-boats come within the admiralty jurisdiction. Judge Hopkinson, in *Boon v. The Hornet*,¹⁰ and Judge Betts, in *McCormick v. Ives*,¹¹ maintain that the admiralty has no jurisdiction over canals, on account of the artificial nature of those waters, and because they are not within the ebb and flow of the tide; according to the principle laid down in the case of the *Thomas Jefferson*.¹² This case, however, has been expressly overruled by the case of the *Genesee Chief*,¹³ establishing navigability as the true test, and the cases depending upon it, fall with it.

In reference to canal-boats, Mr. Justice Nelson, in the *Ann Arbor*,¹⁴ intimates an opinion that they are not within the jurisdiction of the admiralty, since they are exclusively adapted to traverse the waters of a canal, having no independent means of propulsion, and hence, are in no proper sense vessels. The same view was advanced in the *John B. Cole*,¹⁵ before Judge Conkling, but it was rejected by the court; and in the case of the *James E. Eagle*, 8 or 9 Wallace, not yet reported, Judge Nelson quotes with approbation the case of the *Diana*, 1 Lushington, 539, in which Dr. Lushington sustained the jurisdiction of the English Admiralty over a collision happening in the Great North Holland Canal. The Wel-

* *Thackarey v. The Farmer*, Gilp. 526; 2 Chronicles, chap. 9, 21.

¹⁰ *Boon v. The Hornet*, Crabbe, 426.

¹¹ *McCormick v. Ives*, Abb. Ad. R. 421.

¹² *The Thomas Jefferson*, 10 Wheat. 428.

¹³ *The Genesee Chief*, 12 How. 448.

¹⁴ *The Ann Arbor*, 4 Blatchf. C. C. R. 205.

¹⁵ *Van Santwood v. The John B. Cole*, 4 N. Y. Leg. Obs. 376.

land canal, connecting Lakes Erie and Ontario, unites the chain of the great lakes, and the rivers connected with them, with the ocean, by the Gulf of St. Lawrence. The Erie canal and the Oswego canal connect them also with the ocean at New York, and the northern canal connects Lake Champlain with the ocean at New York. These lakes and canals are all connected with foreign territories, and now float an immense commerce, foreign as well as domestic. The vessels in which it is carried on, called sometimes canal-boats, and sometimes lake-boats, have a tonnage of one hundred and fifty to two hundred and fifty tons, and they must be registered, or enrolled and licensed as vessels of the United States,¹⁶ and by these connected navigable waters, in such vessels, the productions of the mines, the forests, the soil, and the manufactures of vast regions yet to be settled and improved, are to find their way to the markets of the world. The Suez canal already connects the Mediterranean with the Eastern seas, and a Panama canal will soon be a highway between the two great oceans. Chief Justice Taney, in the *Genesee Chief*, says of the case of the *Thomas Jefferson*: "We are convinced that if we follow it, we follow an erroneous decision, into which the court fell, when the great importance of the question, as it now presents itself, could not be foreseen, and the subject did not, therefore, receive that deliberate consideration, which, at this time, would have been given to it by the eminent men who presided here when that case was decided. For the decision was made in 1825, when the commerce on the rivers of the West, and on the great lakes, was in its infancy, and of little importance, and but little regarded, compared with that of the present day." In view of the proportions which this commerce must assume, I can see no valid reason for denying these waters, navigable from the sea, by vessels of ten or more tons burthen, the character of navigable waters, and such vessels the maritime character of vessels.

§ 222. A ship is usually described as consisting of the ship, her tackle, apparel, and furniture, and tackle, etc., of a steamer, her engine. This includes the hull and spars, which constitute the ship; the rigging, which constitutes the tackle; the sails, which are her

¹⁶ 9 Stat. at Large, 88, chap. 60; Act of July 20, 1846; 1 Stat. at Large, 305, § 1.

apparel; the anchors, and numerous utensils for ship's use, which are the furniture. This does not include the boats, nor the ballast.¹⁷

§ 223. A ship is always the same ship, although the original materials of which it was composed may, by successive repairs and alterations, have been in the course of time entirely changed; and if a ship be entirely taken to pieces, without the intention of reconstruction, should the same materials be reconstructed into a ship in precisely the same manner, it would not be the same, but another ship.¹⁸

¹⁷ Sea Laws, 444; *The Dundee*, 1 Hag. Ad. R., 124; 1 Molloy, 313; *Nouveau Valin*, 86.

¹⁸ Sea Laws, 443-4; *Malynes*, 123; 1 Boulay Paty, 102, 104; 1 Mol. 312.

CHAPTER XVI.

SEAS — LAKES — RIVERS.

§ 224. A SHIP is none the less or more a ship, because she is confined to fresh or salt water, or running or stagnant water. The phrases, *the sea*, *the high sea*, *the high seas*, are frequently used in connection with the admiralty jurisdiction. *The high sea*, *the open sea*, are phrases used to distinguish the expanse and mass of any great body of water, from its margin or coast,—its harbors, bays, creeks, inlets. *High seas*, in the plural number, more properly means the oceanic mass of waters, which is composed of many subdivisions of seas and oceans.¹

§ 225. *The sea*, what is it in the legal sense? It means, when used by a nation or people, the large navigable waters, on which that people have intercourse or commerce in ships and vessels. On islands in the ocean, it means the ocean; in the languages of the South of Europe, it means the Mediterranean; on the Baltic Sea the White Sea, the Zuyder Zee, Sea of Geneva, the Black Sea, the Sea of Marmora, the Sea of Azof, the Caspian Sea, the Sea of Aral, the Red Sea, the Dead Sea, the Sea of Galilee, it means the waters of those seas respectively. In classic Latin and Greek, ancient and modern, and in the vernacular tongue of those who dwell on the shores of those seas, and carry on commerce on their waters, those waters are the sea, and the vessels which navigate them are ships. In the 107th Psalm, the phrase, "those who go down to the sea in ships," is a strictly literal translation of the Greek of the Septuagint, and the Latin of the Vulgate; and in all these languages, precisely the same words are used for sea, and for ship, as are used in Mark iv. 1, for the little sea of Galilee, and the

¹ *Waring v. Clarke*, 5 How. 462; *Dunlap's Prac.* 32.

vessels in the port of Capernaum; and the same words are in constant use throughout the Scriptures, for all sorts of navigable waters and navigating vessels. Virgil uses *mare*, for the river Timavus, and it was in common use by all writers in Latin, for any large body of navigable waters, and an adjective was added to give it a specific use. *Mare inferum, superum, Tyrhenum, Tuscum, Adriaticum, Ionicum. Mare magnum, Mare oceani.*²

§ 226. The visible flux and reflux of the tide is by no means necessary to constitute the sea. There are no visible tides in the Baltic, the Black, the Caspian, the Aral, the Marmora, the Azof, the Dead Sea, or the Sea of Galilee. I say visible tides, for if the tides be the result of the moon's attraction, then there must be a tide in all large bodies of water, for that attraction must be universal and irresistible; and although not easily perceptible, because of the restless character of the fluid, still a tideometer might be constructed, with such delicate arrangements, as to show the attraction of the moon with as much certainty as the heat in her winter rays is measured by delicately constructed thermometers. If the jurisdiction of a court should be made to depend upon such a criterion, instead of the character of the controversy, such an instrument, instead of the arguments of counsel, would be necessary to enlighten the court.

§ 227. The Mediterranean Sea was the great theatre of all the maritime commercial enterprise of the early ages, of which we have any knowledge. No one ever doubted that cases on that sea were cases of admiralty and maritime jurisdiction; yet there is always a current running the same way, as regularly as in the Mississippi; and the Baltic, the White, the Black, and the Caspian seas have no tide, but, like our inland seas, the great western lakes, they have at intervals, longer or shorter, a rise and fall of the water, whose cause is unknown, and which may be the result of atmospheric pressure, of the force of winds, of uncertain and variable inflowing currents, or of ocean tides, that, by irregular and obstructed subterranean channels, manifest their power in irregular

². *Waring v. Clarke*, 5 How. 462; *Ains. Dict. Mare*.

spasmodic throes.³ If civilization and commerce had first had their harbors, and built their cities and their ships on the inland waters of the western continent, instead of the eastern, then our majestic rivers and lakes, the inland waters of America, would have had the glory of exhibiting the necessity, and establishing the principles of the maritime law of the world, as they have already been the theatre of some of the most brilliant naval and maritime exploits which have contributed to our national glory.

§ 228. It is not difficult to see how the matter of the tides has risen to a rank in relation to jurisdiction, to which it is not entitled. At the first in England, the rise and fall of the tide was spoken of only in relation to the space between high and low water mark, in tide waters, which was declared to be within the ebb and flow of the tide, and so within the admiralty jurisdiction, when the tide was in; but it had no relation to the general question of admiralty jurisdiction. "As far as the tide ebbcd and flowed," meant as far as high water mark on the shore, and not as far up the stream as the tide was perceptible. It had no relation to tideless waters. But in England, during the contests with the admiralty, the common law courts, as has been shown, seized upon anything for a pretext to further their views, and it was easy to make the flowing of the tide a limit, as well in the navigable rivers as on the sea coast. In the general maritime law, there is nothing that confines maritime transactions or the maritime law, to tide waters or salt water. They are limited only to the affairs of ships and vessels, and those who sail, or own, or use, or injure them.⁴

§ 229. In admiralty and maritime torts and offences, which depend entirely upon locality, the ebbing and flowing of the tide has

³ Falcon's Dict. 559-60; Silliman's Journal, 6 Am. Reg. 343.

⁴ RISE OF WATER. — The Chicago *Journal* of Saturday says: Lake Michigan was playing its antics again all day yesterday, the water rising from two to four feet every half hour or so, and as suddenly receding.

"At dusk, while the Lake was as smooth as a mirror, without wind or any apparent cause, the water rose to the height of *four feet* twice within an hour. What has caused this great commotion with old Michigan, is a mystery. It is certainly very unaccountable." — *E. Jour.* Aug. 1, 1851.

⁴ *Peyroux v. Howard*, 7 Pet. 342; *The Orleans v. Phoebus*, 11 Pet. 175; *The U. S. v. Coombs*, 12 Pet. 72; *Waring v. Clarke*, 5 How. 463; *ante*, § 71.

been taken as an arbitrary limit to what is called the high sea; and in England, the common law courts have established the tide as the test of jurisdiction in British waters. But in the United States, even in matters which depend upon locality, such as seizures, navigability, instead of tide, is made the test. Congress and the courts embrace within the admiralty and maritime jurisdiction, all seizures on waters navigable from the sea, by vessels of ten or more tons.*

§ 230. There can be nothing in the mere rise and fall of the water, which can affect the jurisdiction of courts, nor in the periodicity of the rise and fall, nor in the cause of that rise and fall. Periodical inundations and freshets exist in most rivers and lakes, and they are subject to some curious laws which are known, and to many others, which have hitherto eluded discovery. It is sufficient to say, that they would form quite as respectable a source of legal jurisdiction and maritime law as any merely lunar influence.†

§ 231. The rivers are properly, and philosophically speaking, a part of the sea. This fact of physical geography is not stated for the purpose of thereby establishing a maritime jurisdiction in all, or in any rivers. For the purpose of this question, navigability is the true test. The jurisdiction does not depend upon the existence of tides or of salt, or the absence of currents, nor upon any of the characteristic points of distinction between rivers and oceans.‡

It may seem fanciful, and, perhaps, unprofessional; to devote even a paragraph or two to such a view of the subject; but when, by a strict construction, a narrow and exclusive sense is sought to be applied to words of a larger signification, it is not always useless to show that a still more strict and technical construction brings us practically to the same larger and more beneficial signification.

§ 232. The earth is made up of two great systems, if we may so

* Jud. Act, § 9; *Hobart v. Drogan*, 10 Pet. 119; *Conk. Treat.* 2d edit. 136, 139, 350, 351.

† *Jackson v. The Magnolia*, 20 How. 299.

‡ *The Genesee Chief*, 12 How. 454; *The Commerce*, 1 Black. 579; *Hine v. Trevor*, 4 Wall. 565; *The Belfast*, 7 id. 640.

say,—the land system and the water system. “And God called the dry land earth, and the gathering together of the waters called he seas.” The land and the water are each made up of numerous subdivisions, having generic and specific characteristic definitions. They are, nevertheless, respectively, one in a general sense. The land is all connected together, though we do not sometimes see the connection. The mountain, the valley, and the plain, exist as well at the bottom of the ocean, as on the visible dry ground; and capes and promontories, isthmuses, peninsulas, and islands, are but portions of the land. So arms, inlets, bays, ports, rivers, straits, and lakes, are parts of the sea, as the branches of the tree, or the limbs of the human body, are portions of the body. The waters of our little archipelago of New York, that wash the shores of Long Island, Staten Island, New York Island, Bedlow’s Island, Governor’s Island, Barn Island, Randall’s Island, Blackwell’s Island, &c., though they are all within counties of the State of New York, and within the harbor of New York, and are connected with the ocean in every direction by straits hardly more than a pistol-shot in width, do not lose their character as a part of the ocean, because those islands lie near each other, any more than the waters that surround the West India Islands, or the islands of the Grecian archipelago, cease to be portions of the sea, because the islands of the sea lie clustered in their bosom. The great ocean (for, in the general sense, there is but one ocean) is but the great central mass of water, like the trunk of a tree. It is the great reservoir from which water departs in vapor, to be condensed on the land, and rolled back in rivers to its original source, the ocean. If we could take in, in a panoramic view, the whole apparent aqueous system, we should see that the waters are all one mass, apparently, as well as really, with the exception of here and there a lake with a subterranean outlet, and a few rivers that lose themselves in bibulous sands. This is the geographical and philosophical view of this great fact of the unity of the waters. “The gathering together of the waters called he seas.”—Genesis. If the ocean and all its rivers and arms could be dried, and again filled, not by the supplies from rivers, but by welling up from its own depths, it would present the same appearance as before. The great rivers would be shorter, but they would be there, and filled with the ocean brine,

which would send its vapors to the land, and all the old channels of the rivers would be again filled with their currents, and the never-ending circulation would be again in motion. It is all one mass of water, and it would be as rational to say that the peninsulas, promontories, isthmuses, and islands are no part of the land, so far as the admiralty is concerned, as that the bays, creeks, channels, inlets, harbors, and rivers, are no part of the sea. For practical purposes, however, in relation to the admiralty and maritime law, we must be limited, not by any strict and technical limit, but by the purpose,—the use,—the subject-matter, for the purposes of commerce. Hence navigability, so far as water is concerned, is, on principle, the only test of maritime jurisdiction.*

§ 233. The navigable rivers, up to the point of obstruction to the navigation, "*all navigable rivers beneath the first bridges,*" that is, so far as they are navigable, even in England, have been held to be within the admiralty and maritime jurisdiction, so far as those classes of cases are concerned, of which the English Admiralty had jurisdiction, even when arising on the ocean. In the vice-admiralty courts of the colonies, the jurisdiction extended to "*public streams, fresh waters, rivers, and creeks.*"

§ 234. The United States, by the first act of Congress in relation to the judiciary, passed Sept. 24, 1789, declared that the admiralty and maritime jurisdiction extended to "*all waters navigable from the sea by vessels of ten or more tons burthen,*" and these early acts have been always held to be important contemporaneous constructions of the constitution.†

§ 235. The act for the government and regulation of seamen in the merchant service, passed July 20, 1790, section 6, subjects all seamen and all ships and vessels "in the merchant service" (that is to say, not in the public naval service), to the jurisdiction of the admiralty in cases of mariners' wages, and it makes no allusion whatever to the sea or the tides. The act of July 16, 1798, for the

* *Waring v. Clarke*, 5 How. 462; *ante*, § 221.

† *Waring v. Clarke*, 5 How. 464; Conk, Treat. 2d ed. 350, n.; *Jackson v. The Magnolia*, 20 How. 300; *ante*, § 221.

relief of sick and disabled seamen, and the act of May 3, 1802, amending the same, expressly provide, that persons navigating coasting vessels, including "every boat, raft, or flat," going down the Mississippi, with the intention to proceed to New Orleans, shall be considered as *seamen* of the United States.

§ 236. The act "for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," passed Feb. 18, 1793, and the previous act for registering and clearing vessels, &c., and the act of March 2, 1819, supplementary to the acts concerning the coasting trade, and the act of May 2, 1822, for the collection of duties on exports and tonnage in Florida, expressly include all "the *navigable rivers of the United States*."

§ 237. A uniform current of decisions and of practice in every court of the United States having admiralty jurisdiction, from the first establishment of the courts, has settled the law, that all cases arising under these acts, are cases of admiralty and maritime jurisdiction. It must, therefore, be conceded, that principle and practice, the law and the reason of it, the acts of Congress and the decisions under them, all concur in declaring that navigable rivers are within the admiralty and maritime jurisdiction, for certain purposes at least; and the force of these views seems to be fully felt by Judge Woodbury, in his dissenting opinion in the case of *Waring v. Clarke*, where he expressly declares, that the maritime law of continental Europe would carry admiralty jurisdiction over all navigable streams.¹⁰

§ 238. There is no difference between the Mississippi, or any other navigable river, at its mouth, and far inland, or between the ports of Cincinnati, St. Louis, Natchez, New Orleans, Georgetown,

¹⁰ Conk. Treat. 2d edit. 188, 189, 350, 351; *Waring v. Clarke*, 5 How. 475; *Smith v. The Pekin*, Gilp. 208; *Wilson v. The Ohio*, id. 505; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 392; *The U. S. v. Jackson*, 4 N. Y. Leg. Ob. 450; *The Genesee Chief v. Fitzhugh*, 12 How. 443; *Fretz v. Bull*, id. 466; *Jackson v. The Magnolia*, 20 id. 296; *Raymond v. The Ellen Stewart*, 5 McLean, 269; *McGinnis v. The Pontiac*, 1 Newb. 130; *Scott v. The Young America*, id. 101; *Eads v. The H. D. Bacon*, id. 274.

or the numerous other ports on the navigable rivers, and other arms of the sea, except the tides, the currents, and the salt. If any of these can affect the jurisdiction, it must be, not the comparative strength of these elements, but their absolute philosophical existence, no matter how feeble. There cannot be jurisdiction more surely in the fearful tides of the Bay of Fundy and the Solway, than in the gentler flow of hardly preceptible tides; in a current of one mile an hour, than in one of ten; in the intense saltiness of the Dead Sea and the Great Salt Lake, than in the almost fresh waters of the Baltic and the Black Seas. Currents exist in a greater or less degree, chemical analysis detects saline particles, and the influence of the moon's attraction must be felt, in all large bodies of water."

§ 239. The existence of perpetual currents, flowing always the same way, has never been held to affect the jurisdiction of the admiralty. Under the equator, currents in the Atlantic are so violent, that they carry vessels very speedily from Africa to America, but absolutely prevent their return the same way. This current performs a continual circulation, setting out from the Guinea coast, in Africa, for example, thence crossing over the Atlantic ocean into the Gulf of Mexico by the south side of it, then, sweeping around by the bottom of the Gulf, it issues out by the north side of it, and thence takes a direction north-easterly along the coast of North America, till it arrives near Newfoundland, when it is turned in a circuitous manner backwards across the Atlantic again, upon the coast of Europe, and from thence southward to the coast of Africa, from whence it set out. It flows permanently, and in some places, at the rate of five miles an hour. A boat not acted on by the wind, would go from the Canaries to the coast of Caraccas in thirteen months; in ten months would make the tour of the Gulf of Mexico; and in forty or fifty days, would

¹¹ The lakes were probably originally salt; 6 American Register 1810, p. 341.

Among other facts communicated at a recent meeting of the Chicago Historical Society, Col. Graham stated his discovery of a lunar tidal wave upon Lake Michigan. From the comparatively small area of the body of water acted upon by the lunar influence, the co-ordinate of altitude could not but be small. When the moon is in conjunction with, or in opposition to, the sun, its average is about two-tenths of a foot.

go from Florida to the banks of Newfoundland. It deposits, on the coast of Iceland and Norway, trees and fruits belonging to the torrid zone; and remains of a vessel burnt at Jamaica, were found on the coast of Scotland. It is a great river in the midst of the ocean. Other permanent currents, of even greater force and regularity, exist in the Straits of Gibraltar, the Straits of Magellan, and St. George's Channel; and strong, constant currents, and variable and periodical currents of great force, exist in most of the straits and channels of the ocean, often, during their existence, entirely overcoming the tide."

§ 240. The Dardanelles is thirty-three miles long, and varies in width from half a mile to a mile and a half. Cocks are heard crowing from the opposite shores. Lord Byron swam across it in an hour and five minutes, swimming more than four miles because of the current, which is so rapid that no boat can row directly across. It is but a river, connecting two lakes. In ancient times, it had its commerce and its ships. More than four hundred years before the Christian era it was the scene of the greatest naval battle and victory known to ancient history. And, although it can be navigated against the current only by the force of strong, favorable winds, or by steam, in modern times, it floats an immense commerce; and ships of the line, of the largest class, and armed fleets, pass through it from sea to sea. The fearful currents in the Straits of Magellan are known to all navigators. The great American rivers, those of a few furlongs width, and those many leagues wide, pour down their majestic torrents with such force that their turbid waters are carried to an immense distance into the ocean. They are rivers there, as much as on the land. When steam shall have wrought out its destiny, and spread the triumphs of its great revolution throughout the world, these currents will be of no account whatever in navigation.

§ 241. It is universally conceded that the general principles of law must be applied to new kinds of property, as they spring into existence in the progress of society, according to their nature and

¹⁹ Falc. 113, Art. Currents; Encyc. Am. Art. Currents.

incidents, and the common sense of the community. In the early periods of maritime commerce, when the oar was the great agent of propulsion, vessels were entirely unlike those of modern times. Each nation and period has had its peculiar agents of commerce and navigation, adapted to its own wants, and its own waters, and the names and descriptions of ships and vessels are without number. Under the class of mariners in the armed ship are embraced the officers and privates of a little army. In the whale-ship, the sealing vessel, the cod-fishing, and herring-fishing vessel, the lumber vessel, the freighting vessel, the passenger vessel, there are other functions besides those of mere navigation, and they are performed by men who know nothing of seamanship; and, in the great invention of modern times, the steamboat, an entirely new set of operatives are employed, yet at all times, and in all countries, all the persons who have been necessarily or properly employed in a vessel as co-laborers in the great purpose of the voyage, have, by the law, been clothed with the legal rights of mariners, no matter what might be their sex, character, station, or profession."

§ 242. This has been because the maritime law does not stick in the bark of a literal and technical construction, but looks at its rules with a liberal and rational regard to the subject-matter; to the substance, and not to the form. Shall it not do so in relation to the waters, as well as the agents of commerce, and the principles of law? Shall the great inland waters of the American continent be denied the privileges which uniform judicial decision, and immemorial usage, have always allowed to those of Europe, as soon as discovery found, and commerce penetrated them? If modern science, art, and adventure should succeed in carrying profitable commerce through all parts of the frozen zones, and carry our ships to the very poles of the north and the south, would that commerce be denied the benefits of the maritime law, and its judicial jurisdiction, because there are no tides at the polar centres? No more can we, on principle, deny the same benefits to the great waters which the discovery of Columbus, in process of time, opened

¹³ *Walker v. Sherman*, 20 Wend. Rep. 648; *Falcon*. Dic. word *Naval Architecture*; *Wilson v. The Ohio*, Gilp. 505; *Thackarey v. The Farmer*, id. 535; *Ord. la Mar.*, Liv. 2.

to a commerce outvaluing that of all antiquity.¹⁴ What is to be the commerce of American rivers, when those of thousands of miles in length, — like the shorter ones of the older settlements, — shall have their shores covered with busy commercial cities, their rapid feeders with manufacturing towns, their valleys with farms, and shall bear on their currents, the merchandise, manufactures, and agricultural products of what is now an unbroken wilderness? The maritime law will be just as appropriate to, just as necessary to their wants, as to those of the old world; and rational, sound, legal construction, cannot fail to give the benefit of it to them, as it has to the old world.¹⁵

¹⁴ *Jackson v. The Magnolia*, 20 How. 319.

¹⁵ [From the *Albany Evening Journal*, April, 1849.] LENGTH OF SEA COAST OF THE UNITED STATES. — The sea coast of the United States, according to a recent report of the land office, is five thousand one hundred and twenty miles, including the Atlantic, Gulf, and Pacific, or a "shore line" following the irregularities of the shore and sea islands, according to an estimate of the Superintendent of the Coast Survey, of 83,063 miles.

From the northern limits of the United States to the Cape of Florida on the Atlantic ocean.	1,900 miles.
From the Cape of Florida to the mouth of the Rio Grande on the Gulf of Mexico.	1,600 "
From the boundary point one league south of the port of San Diego on the Pacific, along the coast of Oregon and the Straits of Fuca to the boundary point 49 deg. north latitude.	1,620 "
Making together the length of sea coast on the Atlantic, Gulf, and Pacific.	5,120 "
Or a "shore line" following the irregularities of the shore and sea islands, according to an estimate of the Superintendent of the Coast Survey, of	83,063 "

The *Buffalo Commercial* of April, 1849, contains a full list of all the shipping upon the northern and western lakes, with the tonnage of each. The total number of each, and the valuation, is as follows: —

Name.	Number.	Valuation.
Steamers, ...	95	\$3,380,000
Propellers, ...	45	950,000
Sail Vessels, ...	774	7,868,000
Total, ...	914	\$11,898,000

THE COMMERCIAL MARINE OF THE UNITED STATES. — The following astonishing statistics are from the report of the Secretary of the Treasury, of the commercial navigation of the United States, for the last fiscal year: —

The extraordinary commercial progress of our country is shown in the following table of the sum total of our tonnage, with the increase per cent for four decimal periods:

§ 243. The whole maritime commerce of the world, at the time of the earlier and most universally acknowledged codes, was not equal to the present maritime commerce of the American lakes and rivers. In 1846 (it has increased incalculably since), the American registered, enrolled, and licensed tonnage of the lakes, was 106,886 tons, worth six million of dollars; the number of clearances and entries, 15,845; and the amount of imports and exports, \$3,861,088. The number of mariners was 6,972. The river tonnage at the same period, was 249,000 tons, employing 25,000 men, and carrying on a commerce a little short of \$20,000,000. The line of lake coast is about 5,000 miles in extent, 2,000 of which is on the coast of a first-rate power, foreign to the United States, and of the remaining 3,000 miles of lake coast, and of the 17,000 miles of navigable rivers, almost the whole lies at the same time in two or more states of our Union, which in all matters, independent of the national constitution, are foreign to each other.¹⁶

1818, 1,225,284 tons; 1828, 1,741,891 tons, 42 per cent; 1838, 1,995,639 tons, 15 per cent; 1848, 3,154,061 tons, 56 per cent.

In thirty years the tonnage of the United States has increased 160 per cent upon what it was in 1818.

The first six states, in point of shipbuilding, are presented in their order, as follows:

Maine, 89,974 tons; New York, 68,434 tons; Massachusetts, 39,366 tons; Pennsylvania, 29,638 tons; Maryland, 17,480 tons; Ohio, 13,656 tons.

The following facts appear from the report:

One-third of the shipbuilding of Pennsylvania is in the West; 8,000 tons of New York ship-building is on the lakes.

The State of Ohio, an entirely inland state, is the sixth in point of shipbuilding.

The State of Ohio builds as much tonnage in vessels as all the states and ports from Chesapeake Bay to the Rio Grande.

Ohio builds double as much as Virginia, North Carolina, South Carolina, and Florida.

The following is a view of the American tonnage of the lakes, as entered in the different marine districts:

Lake Champlain, 4,745 tons; Lake Ontario, 33,800 tons; Lake Erie, 115,960 tons; Lake Michigan, 10,488 tons; Total, 164,997.

The tonnage of the western rivers (exclusive of New Orleans) is:

Pittsburgh, 30,970 tons; Wheeling, 2,660 tons; Cincinnati, 21,350 tons; Louisville, 8,822 tons; St. Louis, 36,512 tons; Nashville, 2,445 tons; Vicksburg, 588 tons—Total, 108,127.

The river tonnage entered at New Orleans is almost equal to the whole of the above, making a total of almost 200,000 tons of ship tonnage on the western rivers.—[*American Almanac*.

¹⁶ The Genesee Chief, 12 How. 453.

§ 244. On Lakes Champlain, Ontario, and Erie; the United States had more than forty armed vessels, from small craft of one gun, up to "tall admirals," of more than one hundred guns: were they not ships and vessels? On those waters Perry and McDonough immortalized themselves. Were they not naval heroes? — and their brave tars, were they not mariners? Did they not take prizes? Like the modern ocean, those lakes and rivers are now navigated by vessels of every size and description, from vessels of fifteen hundred tons burthen, down to the smallest commercial craft; clearing at custom houses a thousand miles from the ocean for all the ports of the states, and for foreign ports at the ends of the earth; and they must pass from one state jurisdiction to another, back and forth, hundreds of times, on a voyage from New Orleans to St. Louis." They transport millions of passengers, bound from state to state, and from one nation to another, on the great errands of the infinitely diversified commerce of about ten millions of people, on the shores of those waters, — and they are freighted with but the first fruits from fields scattered here and there on the borders of a domain yet to be cultivated, reaching across more than forty-five degrees of latitude and one hundred degrees of longitude, of whose future yearly productions and maritime commerce, the human mind can form no adequate idea.¹⁸

¹⁷ *Waring v. Clarke*, 5 Howard, 497; *Jackson v. The Magnolia*, 20 How. 819; *Genesee Chief*, 12 How. 453; *The Belfast*, 7 Wall. 641; *The Eagle*, 8 Wall. 15.

¹⁸ [*From the New York Express, July, 1849.*] "MONTREAL, July 2. — In connection with the statements of my last letter on the navigation of the St. Lawrence, I may mention that we have had in port during the week three American schooners, drawing eight feet water, with full cargoes, direct from Ohio, which will return with cargoes of salt, and I cut the following from the arrivals in the Quebec Shipping List:

"The propeller *Western Miller*, from Toronto, to Messrs. Gillespies & Co., arrived here on Wednesday evening. Her cargo consists of 2,200 barrels of flour, 72 do. oatmeal, 73 do. cornmeal, 30 do. pot barley, 2,199 bushels wheat, 55 barrels split peas, 48 kegs butter, 12 bales wool, and 3 casks hams. It will be seen, on reference to our advertising columns, that the *Western Miller* will leave again for Toronto to-morrow at noon."

"This vessel is a propeller which makes the passage back from Quebec to Montreal, 180 miles, against the current, in twenty-four hours. She is built to pass the Welland Canal, and may consequently navigate freely from Chicago to Quebec. The cargo above stated is equal to 3,500 barrels, or more than the ave-

§ 245. In all the arrangements of this lake and river commerce, there is nothing to distinguish it from the other maritime commerce of the world. There is not a contract, or a wrong, not a want, a right, or a duty, not a construction, or a contrivance, a utensil, a material, or a supply, nor an agent of commerce, animate or inanimate, that is met with on the widest, the stormiest, and the saltiest ocean, that has not its counterpart on these mighty rivers and lakes; and the same rules of law are to be applied to the controversies that arise there. A salvage, an average, a bottomry, a case of wages, of freight, of pilotage, of wharfage, on Lake Erie, the Mississippi, or the St. Lawrence, are as clearly cases of admiralty and maritime jurisdiction, and as much subject to the admiralty and maritime law, as similar cases in the Black Sea or the Baltic, the Straits of Magellan, the Dardanelles, or Long Island Sound. Their nature is the same everywhere, they are maritime everywhere." If the Admiral of ancient times existed here, with the jurisdiction and functions of his palmiest days, it would be now, as it was then, in the local waters alone, where his own nation claimed exclusive jurisdiction, in our close seas, our harbors, lakes, and rivers, or over our own vessels, that his power and prerogative would be felt in the admiralty law.

§ 246. Congress in 1845, passed "An Act extending the jurisdiction of the District Courts to certain cases upon the lakes and navigable waters connecting the same." It is in these words:

"Be it enacted by the Senate and House of Representatives of

rage cargoes of the brigs and schooners which clear from good Northern ports for the Gulf of Mexico, the West Indies, or the Spanish Main."

[From the *New York Tribune*, October, 1849.] "MONTREAL, Oct. 9, 1849.—A bark has just left Chicago on its way to California, by the St. Lawrence. She has fifty-three passengers from the West, but will take her cargo from Quebec. Special permission was given to this vessel. Next session of Parliament will throw the St. Lawrence open to all vessels."

¹⁹ *Rossiter v. Chester*, 1 Doug. Mich. R. 154; *Gazzam v. Cincinnati Ins. Co.*, 6 Ohio R. 71; *The Genesee Chief*, 12 How. 453.

"The record of the marine disasters on the Northern lakes for 1868 and 1869 shows that in 1868 there were 1,164 casualties, involving a loss of life of 321, and of property of \$3,114,000; and that in 1869 there were 1,914, with a loss of 209 lives and \$4,160,000 worth of property; that in 1868 there were totally lost 105 vessels of the value of \$1,207,300, and in 1869 there were 126 vessels lost of the value of \$1,414,200."—*Congressional Report*, *New York Times*, Dec. 15, 1869.

the United States of America, in Congress assembled, That the District Courts of the United States shall have, possess, and exercise, the same jurisdiction in matters of contract and tort, arising in, upon, or concerning steamboats and other vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and at the time employed in business of commerce and navigation, between ports and places in different states and territories, upon the lakes and navigable waters connecting said lakes, as is now possessed and exercised by the said courts in cases of the like steamboats and other vessels employed in navigation and commerce upon the high seas, or tide waters, within the admiralty and maritime jurisdiction of the United States; and in all suits brought in such courts in all such matters of contract or tort, the remedies, and the forms of process, and the modes of proceeding, shall be the same as are or may be used by such courts in cases of admiralty and maritime jurisdiction; and the maritime law of the United States, so far as the same is, or may be applicable thereto, shall constitute the rule of decision in such suits, in the same manner, and to the same extent, and with the same equities, as it now does in cases of admiralty and maritime jurisdiction; saving, however, to the parties the right of trial by jury of all facts put in issue in such suits, where either party shall require it; and saving also to the parties the right of a concurrent remedy at the common law, where it is competent to give it, and any concurrent remedy which may be given by the state laws, where such steamer or other vessel is employed in such business of commerce and navigation.

“Approved, February 26, 1845.” “

§ 247. This act has been considered as extending the admiralty jurisdiction to the internal waters mentioned in the act, and in that point of view, its constitutionality has been doubted. And it is undoubtedly true, that if the language of the constitution, “All cases of Admiralty and Maritime jurisdiction,” does not embrace cases arising on the navigable rivers and lakes, then no act of Congress could make such cases admiralty or maritime

²⁰ Acts of 1845, 5 Stat. at Large, 726; *Genesee Chief v. Fitzhugh*, 12 How. 451.

cases; for no principle is better settled, than that Congress cannot extend, any more than they can destroy, a provision of the constitution. If, however, under any of the clauses of the constitution, the Federal Government has the power to regulate such cases, then it is equally clear, that the judicial determination of such cases may be conferred on such courts of the Union, and the proceedings in them may be regulated in such manner, as Congress may determine."

§ 248. The power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

"To constitute tribunals inferior to the Supreme Court; to define and punish piracies and felonies committed on the high seas, and offences against the law of nations."

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the constitution in the government of the United States," together with the judicial power, are amply sufficient to authorize Congress to pass any laws which they may deem salutary in relation to the jurisdiction and mode of trial of any cases of commerce on the great navigable rivers and lakes. The power in Congress to regulate commerce with foreign nations and among the several states includes navigation upon the high seas, and in the bays, harbors, lakes, and navigable waters within the United States."

§ 249. The phraseology of the act of 1845 seems to indicate, that at the time of its passage, Congress were impressed with the importance of extending the beneficial course of admiralty proceedings to such cases, but were somewhat doubtful of their power to consider them as cases of admiralty jurisdiction. The remark of Mr. Webster, the most profound expositor of the constitution, after Chief-Justice Marshall, on the subject of this act, seems to be true: "The only objection to this necessary law, seems to be

¹¹ Conk. Ad. Jur. and Prac. 4; *The Genesee Chief v. Fitzhugh*, 12 How. 452; *Jackson v. The Magnolia*, 20 How. 300; *vide* § 237, and cases cited.

¹² *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 392; *Fox v. The Revenue Cutter No. 1*, 8 Am. Law Reg. 459; *The Passenger cases*, 7 How. 414.

that Congress, in passing it, was shivering and trembling under the apprehension of what might be the ultimate consequence of the decision of this court in the case of the *Thomas Jefferson*. It pitched the power upon a wrong location. Its proper home was in the admiralty and maritime grant, as in all reason and in the common sense of all mankind, out of England, admiralty and maritime jurisdiction ought to extend, and does extend to all navigable waters, fresh or salt.”²²

§ 250. So far as the cases embraced in the purview of the act are concerned, Congress might, by virtue of the power to regulate commerce and the judicial power, give jurisdiction of them to the courts of the United States, and that being so, the process and proceedings would be entirely under the control of the national Legislature. Congress might provide, that in all suits in the courts of the United States, the remedies and the forms of process, and the modes of proceeding, shall be the same as are, or may be used in cases of admiralty and maritime jurisdiction, saving to the parties the right of trial by jury, in the cases provided by the constitution; and as has been before remarked, the trial by jury might be made compulsory in all admiralty cases, if it were expedient.

When, therefore, Congress enacts that, in certain classes of cases over which they have jurisdiction, the District Courts shall exercise the same jurisdiction,—according to the same forms of process and modes of proceeding,—and apply the same rules of law, as in cases of admiralty and maritime jurisdiction, it is entirely immaterial whether those classes of cases be really admiralty cases or not, according to any received definition. For all practical purposes of law and justice, they are admiralty cases wherever they may arise.”²³

§ 251. This act, it will be observed, as to subject-matter, embraces all matters of *contract* and *tort*, arising in, upon, or concerning steamboats or other vessels. As to the kind of water-

²² *Post*, § 255; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 378; *Waring v. Clarke*, 5 How. 475; *The U. S. v. La Vengeance*, 8 Dal. 297.

²³ *Ante*, § 248.

craft, it embraces *steamboats and other vessels*, enrolled and licensed for the coasting trade. As to the size of the vessels, it embraces vessels of *twenty tons burden and upwards*. As to the business in which the vessels are employed, it must be the business of *commerce and navigation between ports and places in different states and territories*;" and as to the locality, it must be upon *the lakes and the navigable waters connecting said lakes*. It does not take away the concurrent remedy that existed at common law, or any concurrent remedy which may be given by state laws."

§ 252. It does not embrace the great navigable rivers, which do not connect the lakes. Thus, while it embraces the Niagara river, it does not embrace the Mississippi; a distinction for which it is difficult to perceive the cause. The commerce of the rivers is quite as important as that of the lakes, and if an act of Congress be necessary for the purpose, it is to be hoped that the navigable rivers may soon have the benefit of a similar enactment."

§ 253. In the case of the *Thomas Jefferson*, 10 Wheat. 428, the Supreme Court held that the admiralty had not jurisdiction in a case of seaman's wages earned on the Ohio, Mississippi, and Missouri rivers, the whole voyage being above tide water. The case does not appear to have been argued; and Judge Story, in delivering the opinion of the court, adverted to the old controversy between the English courts, and because the English admiralty did not claim jurisdiction except in tide waters, (this, he says, is the prescribed limit which it was not at liberty to transcend,) seemed to suppose that the jurisdiction could not exist here. Neither the English admiralty nor common law courts in those days, so far as I have been able to discover, ever adverted to the point, except to claim jurisdiction below the first bridges in all navigable rivers. He puts his opinion on the prescribed limit, which the English admiralty was not at liberty to transcend. He says, "In the great struggles between the courts of common law

¹⁵ *Allen v. Newberry*, 21 How. 244; *Maguire v. Card*, id. 248

¹⁶ *The Globe*, 2 Blatchf. 427.

¹⁷ *Ante*, §§ 246, 247, 248, 249.

and the admiralty, the latter never attempted to assert any jurisdiction except over maritime contracts. In respect to contracts for the hire of seamen, the admiralty never pretended to claim, nor could it rightfully exercise, any jurisdiction except in cases where the service was substantially performed, or to be performed upon the sea, or upon waters within the ebb and flow of the tide. This is the prescribed limit, which it was not at liberty to transcend." Thus placing his decision on what he supposes to be purely English ground, yet without citing any authority to show that the question, in the form in which he presents it, had ever been mooted in that country. The English admiralty had certainly all along claimed jurisdiction in all navigable rivers below the first bridges, that is, up to the point of obstruction; but I know of no evidence that a case ever arose above the bridges, or that there were then any ships or maritime commerce with reference to which it could arise."

§ 254. The Supreme Court had, before that time, decided, as they have since, that the jurisdiction, in case of contracts, does not depend on place, but on the nature of the transaction; and also that, so far as place was concerned, waters navigable from the sea, by vessels of only ten tons burthen, are by the statute, sec. 9, within the admiralty jurisdiction. The criticism by the learned judge of the language of that statute and the Seamen's Act, seems to want his usual reflection. The clause in the first act is apparently declaratory, and the clause inserted to preclude a doubt, "all civil causes of admiralty and maritime jurisdiction, including all seizures, under laws of import, navigation, or trade of the United States, when the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas." By the simple force of that language, all such cases, as well on the lakes and rivers as on the high seas, have been uniformly held to be within the admiralty jurisdiction, and to be civil causes, triable by the court without a jury; so the Seamen's Act of 1790, in its title, embraces, all seamen "in the merchant service;" its language

²⁵ The *Thomas Jefferson*, 10 Wheat. 428; *Dunlap's Prac.* 32.

is, "every seaman or mariner,"—"any seaman or mariner,"—"every ship or vessel,"—"any ship or vessel," without any allusion to the tides,—mere navigability seems to be all that is necessary, and that is left to be inferred from the fact, that the service is on board a ship or vessel."

§ 255. Notwithstanding this case of the *Thomas Jefferson*, at a later period, the Supreme Court held a different doctrine. They could not fail to be embarrassed by the narrow rule then adopted on merely English grounds, for it would exclude the Mississippi river and the port of New Orleans, a port thronged with the largest ships, and carrying on a wider and more extensive maritime commerce than most of the ports of the world. At that port the water is fresh and free from tide, but it would shock the legal sense of every lawyer to exclude it from the admiralty and maritime jurisdiction; and the Supreme Court, accordingly, held, in the case of *Peyroux v. Howard*, 7 Pet. 324, and *Waring v. Clarke*, 5 How. 441, and it is now well settled, that it is within the admiralty jurisdiction, although there is no ebb or flow, and its current always runs outwards, like the Mediterranean, and its waters are fresh. The court, however, do homage to the English rule, and place their decision on the ground that the river is influenced by the tide, and shows a sort of irregular swell, which must be caused by the tide. The learned judge, who delivered the opinion of the court, says that "so far as admiralty jurisdiction depends upon locality, it is bounded by the ebb and flow of the tide." But in matters of contract, it does not depend upon locality, but upon subject-matter, as has been repeatedly decided, and is well settled."

§ 256. To recapitulate: on principle, it clearly cannot be the moon's attraction, the presence or absence of the tide, which determines the jurisdiction,—nor the periodical rise and fall of the

²² *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 344; *Hobart v. Drogan*, 10 Pet. 119; *The U. S. v. Coombs*, 12, 76; *Conk. Treat.* 2d edit. 136, 139, 350, 351.

²³ *Ante*, § 25; *Peyroux v. Howard*, 7 Pet. 324; *Waring v. Clarke*, 5 How. 441, 497-8; *Thackarey v. The Farmer*, 12, 455; *The Genesee Chief*, Gilp. 524; *The Orleans v. Phœbus*, 11 Pet. 175; *The U. S. v. Coombs*, 12 id. 76.

water." Nor the presence or absence of saline particles in the water." Nor the presence or absence of a current in the water. Nor the size or character of the outlet, stream, or strait, by which the lake or sea is connected with a larger body, or with the ocean." Nor that the water be an inland basin, land-locked, or land-surrounded sea or lake." Nor that the water be a river." Nor place or locality in matters of contract, but the subject-matter." Nor does its being in a harbor, or port, or body of a county." Nor the question, whether the common law has provided a remedy or not for similar cases." Nor the question, whether the local municipal laws and officers can be resorted to." Nor any British statute."

The jurisdiction can depend upon nothing in matters of contract, but the subject-matter, the nature and character of the controversy. If that be connected with ships and shipping, — commerce and navigation, — the admiralty has jurisdiction, otherwise not. "*Toutes les affaires relatives à la commerce et navigation et aux navigateurs appartient au droit maritime.*"⁴¹

³¹ *Ante*, § 226, *et seq.*

³² *Ante*, § 238, *et seq.*

³³ *Ante*, §§ 240, 247.

³⁴ *Ante*, §§ 226, 227.

³⁵ *Ante*, § 240.

³⁶ *Post*. § 261; *Waring v. Clarke*, 5 How. 441.

³⁷ *Ante*, §§ 162, 232; *Waring v. Clarke*, 5 How. 464.

³⁸ *Ante*, § 205, *Waring v. Clarke*, 5 How. 459.

³⁹ *Ante*, § 206.

⁴⁰ *Ante*, §§ 14, 118, 161.

⁴¹ 3 *Pardessus Loix Mar.* 451.

CHAPTER XVII.

THE QUESTION CONSIDERED ON AUTHORITY IN SPECIAL CASES.

§ 257. THE foregoing historical, legal, judicial, and constitutional considerations, while they exhibit the ample jurisdiction of the maritime law, establish also the rule that the law of jurisdiction of the English High Court of Admiralty, as acknowledged and restrained by the common law courts of England, at the time of the American Revolution, and since, is not the law of the jurisdiction of the American Admiralty; and that the decisions of the King's Bench and Common Pleas in England, restraining the admiralty jurisdiction, are of no authority here.

§ 258. The same rule is established, by a weight of authority in this country,¹ which would have rendered the present treatise unnecessary, were it not true, that while the general rule has been fortified by repeated decisions in every court of the United States, and in every period of our judicial history, a large number of cases have also been decided on principles which can be maintained only on the authority of the narrower English rule; and this conflict of decisions has subjected the general rule to renewed attack and investigation, as new cases arise, apparently in the hope of establishing new exceptions, if not of destroying the rule altogether, and confining the American Admiralty to the modern English limits. The court sometimes seeming, perhaps unconsciously, subject to the drift of opinion and events which for many years has tended to exalt and extend the authority of the

¹ *The Mary*, 1 Paine, 673; *Steele v. Thacher*, Ware, 91; *Drinkwater v. The Spartan*, id. 152; *Waring v. Clarke*, 5 How. 441; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 id. 344; *The Huntress*, *Daveis' R.* 98.

states, and to deny to the government many of the constitutional rights, which the logic of a few years past has fully established.

§ 259. It is, however, true, that the more important the case presented, the greater the ability with which the question of jurisdiction has been argued at the bar, and the more carefully and learnedly it has been examined by the bench, the more surely has the jurisdiction of the admiralty been sustained in that large and beneficial extent, which alone makes it a valuable portion of the national jurisdiction. It is also true, that opinions have been pronounced in favor of the narrow English rule, which seem to be written in a spirit somewhat characteristic of Westminster Hall in the days of Lord Coke, and which seem to treat the question as one of mere municipal importance, rather than as one of national interest.*

§ 260. From the case of the *Betsey*, in 1794, 3 Dal. 6, and *La Vengeance*, in 1796, 3 Dal. 297, down to the present time, the Supreme Court have uniformly held the same general principles on this subject. Many of the judges who presided in that tribunal during its earlier existence, and a large portion of the Congress that established our judicial system, had been members of the convention which formed the constitution, and were thus well fitted to judge of the proper force of its language. While we cannot but admit that those members of the court who have dissented in a few instances from the opinion of the court, have been worthy of distinguished honor for the learning and ability which made them ornaments of the court, it is no disparagement of them to say, that among the number who have been first and always in the majority, are embraced those immortal jurists, whose judicial career has shed the most lustre upon the nation. And the existence of only a few dissenting opinions in eighty years, in which the whole argument on the other side has been presented in the strongest light by judges of the most distinguished ability, after solemn argument, instead of throwing doubt upon the repeated

* *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 344, 389; *Waring v. Clarke*, 5 id. 441; *The Genesee Chief*, 12 id. 443; *Steele v. Thacher*, Ware, 91.

decisions of the court, is, in truth, strong evidence in support of the soundness of the principles which have prevailed.³

§ 261. It has thus been uniformly held:

1. That the grant in the constitution, extending the judicial power to all cases of admiralty and maritime jurisdiction, is neither to be limited to, nor interpreted by, what were cases of admiralty and maritime jurisdiction in England when the constitution was adopted. This rule, alone, considered in its proper force and effect, sweeps away the foundation of every objection that has been made to the general jurisdiction of the American Admiralty.

2. That the American Admiralty has a general maritime jurisdiction, embracing all maritime causes of action, as well matters of contract as matters of tort. That in matters of tort the jurisdiction depends upon the locality, and embraces all damages and injuries upon the sea. That in matters of contract, the jurisdiction depends upon the subject-matter,—the nature of the contract,—and embraces all transactions and proceedings relative to naval commerce and navigation.

3. That the right of trial by jury does not affect the question of the maritime jurisdiction.

4. That the jurisdiction is not affected by the question, whether the courts of common law have jurisdiction in like cases, or whether the matter may have arisen within a port or harbor, or county of a state.

5. That the American Admiralty has jurisdiction of all cases of maritime lien.⁴

§ 262. Who can fail to perceive that these principles and rules cover the whole subject. Considered in their proper light,

³ *Glass v. The Betsey*, 3 Dal. 6; *The U. S. v. La Vengeance*, id. 297; *The General Smith*, 4 Wheat. 438; *Waring v. Clarke*, 5 How. 441; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 id. 344; *The Octavia*, 1 Gal. 488; *Drinkwater v. The Spartan*, Ware, 149; *De Lovio v. Boit*, 2 Gal. 398; *The U. S. v. The Little Charles*, 1 Brockenbrough R. 880; *The Draco*, 2 Sumn. R. 157; *Peyroux v. Howard*, 7 Peters, 324; *The Orleans v. Phœbus*, 11 id. 175; *The U. S. v. Coombs*, 12 id. 72.

⁴ *Vide* cases cited under § 260.

and applied only in their necessary extent, they furnish a sufficient guide in settling all questions of jurisdiction in admiralty and maritime cases. For, from them, follows, inevitably, another general principle, clearly stated by Du Ponceau. "*In cases of Admiralty and maritime jurisdiction, a general authority is given to the courts of the United States, to administer, in all cases, that particular body of laws known as the admiralty and maritime laws.*"* *If English law does not bind us, nor English decisions furnish us a guide, we can look only to the general maritime law for the definition and classification of cases of admiralty and maritime jurisdiction.*

§ 263. It has been already remarked, that the true test of a maritime contract is to be found in its relation to a ship or vessel, the great agent of maritime enterprise; a test, at the same time simple, obvious, and easily applied.* And I now propose, in closing this portion of my work, briefly to notice in detail the most numerous classes of maritime causes, in connection with the decided cases and other authorities. To those who look at the subject, and examine its principles with a careful analysis of the substance, rather than of words and forms, it cannot fail to be apparent, that the classes and cases now to be noticed shed a light upon the whole subject, by which any other case may be easily referred to its proper class.

The great characteristic relations of maritime law to the ship are distributed by Pardessus, in his work on commercial law, in a manner, at the same time brief, simple, intelligible, and comprehensive, as follows:†

THE SHIP.

"The transactions embraced in maritime commerce may be classified in a simple and intelligible order. Vessels, the only means by which navigation is carried on, cannot exist except as the

* Du Pon. on Juris. 9.

† The act extending the jurisdiction of the English Admiralty gives it "jurisdiction on any claim for damage done by *any ship*," and under that clause, Dr. Lushington sustained a libel for a collision in the Grand North Holland Canal. *The Diana*, 1 Lushington, 539.

‡ 1 Pard. Droit Com. 81.

property of some one, and all that concerns the vessels themselves, and everything relating to the means of acquiring title to them, constitutes the first class.

THE SHIP'S COMPANY—OFFICERS AND MEN.

“The management of the vessel is intrusted to a leader, usually known under the name of captain, and from this title and character are derived his rights and duties.

“The captain, and those who labor in the service of the vessels, in stations more or less subordinate, contract engagements in which the general principles of the hiring of services are subjected to important modifications and extensions.

THE OWNERS, CHARTERERS, AND FREIGHTERS OF VESSELS.

“Those to whom the vessels belong, do not always employ them for their own personal use. They grant to others the right to transport goods in them, or they undertake, themselves, to make the transportation. Hence, necessarily, arise rules in relation to such engagements, and the application of the general principles, which affect the responsibility of those engaged in transportation, and the necessary relations between the co-freighters in certain circumstances.

ACCIDENTS TO SHIP AND CARGO.

“The accidents to which navigation is exposed may occasion losses or sacrifices, known under the generic name of averages,—and shipwrecks, in which it is necessary to provide for salvage.

INSURANCE OF SHIP AND CARGO.

“Maritime commerce being, in its nature, exposed to damages of every kind, speculators come to the aid of owners of ships and cargoes, and undertake to repair the losses which they suffer. This is the object of the contract of insurance.

LOANS AND ADVANCES ON THE SHIP AND CARGO.

“Maritime expeditions, sometimes giving rise to unforeseen need of funds, which it is not always easy to procure by simple loans, and for the payment of which other security cannot be given than

the objects themselves on which the advances are made, men have felt the need and acknowledged the advantages of associating the lender in the risks of navigation, so that the chance of loss may be compensated by the hope of a larger interest than his capital would produce in the commerce of the land, and this has given rise to the contract of bottomry.

FISHING VESSELS AND FISHERIES.

"Maritime business is not confined solely to voyages and transportation of persons or merchandise; the fisheries are an important branch of it, subject to special regulations, dictated by national and commercial interests."

§ 263 *a*. In the exercise of its appropriate jurisdiction, the Court of Admiralty exercises equitable, as well as legal jurisdiction. If the subject be of a maritime nature, and so within the power of the court, and be of such a nature, that the relief must be in the nature of equitable relief, the court is entirely competent to give the equitable, as well as the legal relief. It has the capacity of a court of law, and, in certain respects, the capacity of a court of equity. In its decisions upon the ultimate rights of parties, from considerations of conscience, justice, and humanity, it sometimes mitigates the severity of contracts, and moderates exorbitant demands.* The nature of maritime controversies, obviously, however, necessarily excludes from courts of admiralty, large classes of cases, such as specific performance, trusts, &c., which are of frequent occurrence in courts of equity.* And the Court of Admiralty is not a court of general equity, nor has it the characteristic powers of a court of equity, but it is bound, by its nature and constitution, to determine the cases submitted to its cognizance, upon equitable principles, and according to the rules of natural justice. It can-

* *Edw. Ad. Jur.* 81, 138, 173; *post*, § 358; *The Orleans v. Phoebus*, 11 Pet. 175; *Macomber v. Thompson*, 1 Sum. 388; *Brown v. Lull*, 2 id. 443; *Drummond's Administrators v. Magruder & Co's Trustees*, 9 Cranch, 125; *The Hiram*, 1 Wheat, 440; *The Fortitudo*, 2 Dod. 58; *The Minerva*, 1 Hag. Ad. R. 357; *The Cognac*, 2 id. 377; *Ellison v. The Bellona*, Bee, 106; *The Virgin*, 8 Pet. 550.

* *Davis v. Child, Daveis*, 71, S. C. 3, N. Y. Leg. Obs. 147; *Kynoch v. The Ives*, Newb. 205; *The Larch*, 2 Curt. C.C.R. 427; *Kellum v. Emerson*, id. 79; *The Perseverance*, Blatchf. & H. 385.

not, in a technical sense, be called a court of equity. It is rather a court of *justice*.¹⁰

The admiralty has, however, no jurisdiction in matters of account between part-owners, or others, except when the taking an account is a mere incident to a maritime cause of action.¹¹ It has also been held that it has not jurisdiction of mortgages, in questions between the mortgagee and the owner; so as to be able to foreclose a mortgage of a vessel, by a sale, or by decreeing the ship to be the property of the mortgagees, and directing the possession to be given to them;¹² and that a lien reserved by contract, which in affect amounts to nothing more than a mortgage, does not avail to give it jurisdiction,¹³ distinctions which do not seem to be known to the general maritime law and may on review be amended.

§ 264. The first man who applies his service to making a ship available for the great purposes to which she is designed as a maritime agent, is the builder. He brings to the construction, skill, labor and capital, and incorporates all of them, in a greater or less degree, into the fabric. Without his aid, she would perform none of her appropriate functions, for she could not exist. This service is eminently maritime, although it be all performed on land. In the same manner, if he supply capital to purchase that which is intended to enter and does enter into her construction, and if he furnish neither labor, nor materials, nor money, but gives simply the skill which plans and directs, or the care which superintends the labor of others in her construction, he still performs a maritime service, although he may never have been, even for an instant, on the water. The building contract is a maritime contract, whether it be verbal or written, express or implied,—“all matters that con-

¹⁰ *The Harriet*, 1 W. Rob. 192; *The Jacob*, 4 Rob. 250; *The Nelson*, 6 id. 227; *The Trident*, 1 W. Rob. 35; *The Juliana*, 2 Dods. 521; *The Saracen*, 6 Moore, 74; *Coote's Prac.* 8, 9.

¹¹ *The Orleans v. Phœbus*, 11 Pet. 182; *Grant v. Poillon*, 20 How. 162.

¹² *Bogart v. The John Jay*, 17 How. 399; *Schuchardt v. The Angelique*, 19 id. 289; *The William D. Rice*, 10 Law Rep. N. S. 501; *Contra*, *The Hilarity*, *Blatchf. & H.* 90; *Vide*, *Leland v. The Medora*, 2 Woodb. & M. 92; *Deshon v. The Same*, id. 118.

¹³ *The People's Ferry Co. v. Beers*, 20 How. 393.

cern owners and proprietors of ships, as such, and shipwrights, are within the admiralty jurisdiction."¹⁴

In the cases of the *People's Ferry Co. v. Beers*, and *Roach v. Chapman*, the court says, that the contract for building a ship is not a maritime contract, because it is a contract "made on land, to be performed on land; the wages of the shipwrights have no reference to a voyage to be performed." It cannot, however, with strict propriety, be said that a ship is built on the land. Her keel is indeed laid in an inclined plane on the shore, and her frame is forcibly kept from the water, until her hull is so far advanced as to be buoyant. At the proper time she is allowed to slide into the water, where she is made a ship. *Finis coronat opus*. From the time when her keel is laid to the last work upon her rigging, not a timber is framed, not a spike or trenail is driven, nor a plank, a rope, a block, or an earing is put in place, except for the direct, useful, maritime purpose of making her a seaworthy ship. On the land she is useless; she can neither stand nor go. On the water she is the perfection of usefulness, as the great agent of maritime commerce, to whose wants and exigencies, and perils, she must be well adapted by the builder. And this is his contract, and his wages have reference to all her voyages to be performed. The navigable waters, and their perils, and the ship, and her owners, and sailors, and cargo, are all there is in maritime commerce and admiralty jurisdiction, and Valin may well say, "what would be the function of admiralty courts, if they had not the jurisdiction of the building, rigging, furnishing, outfit, sale, and adjudication of vessels." The maritime law, as laid down by all the great civilians and jurists, embraces contracts for building, repairing, supplying, and navigating ships.¹⁵

By the civil law—"whoever gives credit for building, or furnishing, or repairing a ship, has a lien upon it." "What any one gives credit for, for the purpose of building, repairing, furnishing, or outfitting, or even selling a ship, is a lien upon it."¹⁶

¹⁴ *Davis v. A New Brig*, Gilp. 473; *Harper et al v. A New Brig*, id. 536; *The Hull of a New Ship*, Daves, R. 199; *ante*, §§ 50, 95, 105, 151; Godol. 43. *Contra*, *The People's Ferry Co. v. Beers*, 20 How. 393; *Roach v. Chapman*, 22 id. 129.

¹⁵ *De Lovio v. Boit*, 2 Gall. 475.

¹⁶ *Qui in navem exstruendam vel instruendam credidit vel etiam emendam, privilegium habet.*

By the Consulat — "If a ship newly built, is sold at the suit of creditors, before it has been launched, or before it has made a voyage, the mechanics, caulkers, and other workmen, as well as those who have furnished timber, pitch, spikes, and other things necessary for the building of the ship, shall be preferred to all other creditors whatever, even to those who may have lent money, with a written declaration that it is to be used in the building of a vessel." ¹⁷

Cleirac, to the same effect, says, — "Hypothecation is special and privileged for the wages of the carpenters, caulkers, and other workmen, and for those also who have furnished tar, pitch, casks, timber, spikes, oakum, and other materials for the building or repairing a vessel." ¹⁸

The Marine Ordinance of 1691 is equally clear, — "The judges of the admiralty have jurisdiction exclusively of all others, and between all parties, of every thing which concerns the building, tackle, apparel, furniture, outfit, victualling, sale, and adjudication of vessels." ¹⁹

In like manner, Valin, commenting on this article of the Ordinance, — "there is never any dispute in relation to the objects expressed in this article, which concern the *building, rigging, furniture, outfit, sale, and adjudication of vessels*; (the italics are his,)

Quod quis navis fabricandæ vel emendæ vel armandæ vel instruendæ causa, vel quoque modo crediderit, vel ob navem venditam petat habet privilegium. Dig. Lib. 42, Tit. 6, Art. 26, 34.

¹⁷ Si un vaisseau nouvellement fabriqué est vendue à la poursuite des creanciers avant qu'il a été lancé à la mer, ou avant qu'il a fait son premier voyage, les maitres de haches, calfats et autres ouvriers, comme encore ceux qui ont fourni le bois, la poix, les clous, et autres choses necessaires pour la construction de navire, seront préférés à tous autres creanciers, quelques qu'il soient, même à ceux qui auraient prêté avec declaration par écrit que c'est pour employer à la construction d'un vaisseau. Consulat de la Mer, chap. 32.

¹⁸ L'hypothèque est aussi spéciale et privilégiée pour le loyer des maitres de haches, charpentiers, calfats, et autres ayant travaillé à leur journees, ou mares, et pour ceux pareillement qui ont fourni goudron, ou tray, fustaille, bois, clouage, sartic, estoupe, et autres agreilles pour la fabrique ou radoub du vaisseau. Cleirac Jur. de la Marine, 351, Art. 6.

¹⁹ Les juges de l'amirauté connaissent, privativement à tous autres, est entre toutes personnes de quelque qualité quelles soient même privileges, Francois et étrangers, tant en demandant qu'en defendant de tout ce qui concerne la construction, les agrès, et appaux, avitaillement, et equipement, vente et adjudication des vaisseaux. Ord. de la Marine, (1691). Tit. 2, Art. 1.

and in truth what would be the function of admiralty courts, if they had not jurisdiction of such causes." "

Emerigon quotes with approbation, and as authority, the foregoing, and other similar passages, in chapter 12, sections 3, 4, 5, of his treatise on maritime loans, and on page 566, quarto edition, says,—"There is nothing so much favored as the price of work and materials for the building of a vessel. Commerce and the state are interested in it. It is just that the workmen and material-men should enjoy the lien upon the thing, which is given them by the Marine Ordinance. They cannot be deprived of this privilege, except when it is proved that they trusted the person, not the thing." Boulay-Paty, in more recent times, in his commentaries on the Commercial Code, in which the jurisdictional clauses of the Ordinance are re-enacted, sections 1 and 2, as does also the Nouveau Valin, bring down to our own time, in equivalent words, this maritime law of all the ages.

Even the English judges, with the King and his Council, in the resolutions of 1632, say, (Resolution 3, *ante*, § 95),—

"If suit shall be in the Court of Admiralty, for *building*, amending, saving, or necessary victualling of a ship, against the ship itself, and not against any party by name, but such as for his interest makes himself a party, no prohibition is to be granted, though this be done within the realm."

And if we pass behind these great commentators to the original codes of all the maritime states and cities, which the wonderful industry and learning of Pardessus have brought together, in his great work, (6 vols. quarto,) "*Collection de Loix Maritimes, Antérieures au xviii. e Siecle*," we find that the history, the text, and the commentary of the codes and collections of maritime usages, from the earliest periods of antiquity, leave no room to doubt the maritime character of contracts for building, repairing and supplying ships, and their lien upon the ship. And it can hardly fail to excite surprise, that the decisions of the most learned judges, who

²⁰ Il n'y-a jamais de contestation par rapport aux objets exprimés dans cet article qui concernent *la construction, les agrêts, et apparauz, armement, avitaillement, et équipement, vente et adjudication des vaisseaux*. Et en effet quelle serait l'attribution des juges de l'amirauté s'ils ne connaissaient de ces sortes de cause? 1 Valin, 118. (The italics are Valin's.)

have made the admiralty law under the constitution and the decisions of the Supreme Court, the study of their lives, should have been overruled on the authority of two little considered decisions of an inland judge of a state court, before the constitution had any existence.

If it were conceded that "liens on vessels encumber commerce and are discouraged," it could not overrule the maritime law. But liens, instead of encumbering commerce, facilitate it. They furnish to the ship-builder and ship-owner a necessary facility and security for credit, in carrying on their enterprises till the completion of the ship, when she can be sold and payment made from the proceeds; or, in case of repairs, or supplies, till the earnings of a voyage may be appropriated to the payment of her bills. If no builder or ship-owner could use his vessel as a means of getting money, or credit, everywhere, not only where he is not known, but where he is known, not only where the vessel does not belong, but in her home port, when the owner himself negotiates the transaction, none can know so well as those familiar with maritime commerce what beneficial enterprises must fail, and what commercial intelligence and skill must go unemployed, or be brought to ruin by the unforeseen accidents of the sea. In the language of Emerigon,—"It is just that the workmen and material-men should enjoy the lien upon the thing which is given them by the Marine Ordinance. They cannot be deprived of this privilege, except when it is proved that they trusted the person, and not the thing." The lien is always presumed, but it may be disproved. "There is nothing so much favored." "Commerce and the State are interested in it." Sir Leoline Jenkins has ably pointed out the inconvenience to the public and to trade, if the admiralty jurisdiction be evaded—among other things, as to building and victualling ships, and as to material-men, that is, those who furnish materials, or supply work for ships."

§ 265. The builder may sue the owners *in personam* in the admiralty, to recover whatever is due to him for his services, or for violations of the building contract in the construction of the vessel,

²¹ De Lovio v. Boit, 2 Gall. 466.

and he has also a lien or privilege for the building service, against the ship herself, which may be enforced in the admiralty. The building contract being maritime, it is evident that the owner may sue the builder in the admiralty for violations of the contract in building the ship. The distinction between maritime contracts and agreements leading to or preliminary to maritime contracts, and contracts wholly or partly performed and those not entered upon, has been adverted to, and must not be lost sight of."

§ 266. The ship, as has been remarked, consists of the hull and spars; the supplying her with tackle, apparel, furniture and boats to fit her for sea, although often included in the builder's contract, is nevertheless the appropriate work of other classes of men, such as sail-makers, riggers, chandlers, boat-builders, all of whom, when called in to contribute in their appropriate departments to the completion of the ship, her tackle, apparel, &c., perform maritime service of the same nature as that of the builder, and equally cognizable in the admiralty."

§ 267. Next after the builder of the ship, the material-man applies his services to making her available for the great purpose for which she is created. Those are called material-men who, at the time of the building of a vessel, or during her subsequent existence as a vessel, supply her, at the express or implied request of the master or owner, with necessary materials to build, fit, outfit, furnish or repair her. Those who thus furnish her with what is necessary to enable her to navigate the sea, and to pursue her voyage in safety, and to perform her appropriate functions, have a maritime demand against the master, if he order them, and against the owner, and they have also a lien or privilege upon the ship herself, her tackle, apparel and furniture, unless the dealings of the parties show that an exclusive personal credit was given to the master or owner."

²² *Ante*, § 212.

²³ *Ante*, § 171, 208.

²⁴ *Edw. Ad. Jur.*; *Zane v. the President*, 4 Wash. 457; *The General Smith*, 4 Wheat. 438; *The Nestor*, 1 Sum. 73; *The Robert Fulton*, 1 Paine, 620; *Peyroux v. Howard*, 7 Pet. 324; *ante*, §§ 50, 95, 106, 151, 264.

§ 268. In the same manner, many others who supply the wants of a vessel may, by analogy, come under the head of material-men. Necessaries for a vessel are not merely those things which are physically material and absolutely necessary to her existence or preservation, which are incorporated with her, or used on board of her; but also those which a careful and provident owner would provide, to enable her to perform well the functions which, as a maritime agent, she is destined to perform,—whatever is fit and proper at the time, for the service in which the vessel is engaged. This may include money, medicines, labor and skill, personal services as well as goods, soliciting, procuring, and hiring a crew,—seeking and securing or supplying a cargo, passengers, or freight, or a charter,—factorage or brokerage for doing her business,—procuring insurance and premiums advanced,—towing, or otherwise removing her. These have all been held to be maritime contracts; and they are all in the nature of materials,—they are supplies of her wants. It is the present, apparent want of the vessel, not the character of the thing supplied, which makes it a necessary. Thus, anchors and cables are, in the general sense, necessaries; but if the vessel is fully supplied with them, another anchor or cable is not necessary. If it be not furnished to supply a want of the vessel, it cannot properly be called materials or supplies.”

But it has been held, that neither the costs of advertising a vessel for sea, nor postage, nor commissions for procuring freight, nor the wages of stevedores or lightermen, nor sums paid for scraping the vessel's bottom before coppering, are liens upon the ship, suable *in rem*; that compressing cotton is also mere shore business, the expense of which is no lien upon the vessel on which the cotton is to be freighted, and that an action *in rem*. cannot be maintained therefor.” It has also been held, that by the

²⁵ Edw. Ad. Jur. 113; *The Alexander*, 1 W. Rob. 288, 346.

In the case of *Zane, v. the Brig President*, water casks were held to be materials, but vinegar not. The reason of this distinction is not given, and the counsel waived the claim for vinegar. There was probably a reason which the report does not state, inasmuch as vinegar is a necessary article of ship stores, and is, by law, a part of the navy rations. 4 Wash. 457. Act of March 3d, 1801, § 3.

²⁶ *The Joseph Cunard*, Olc. 120; *Pratt v. Reed*, 19 How. 359; *Bradley v. Bolles*, Abb. Ad. 569; *Graham v. Hoskins*, Olc. 224; *vide, post*, § 285.

twelfth Admiralty Rule, as amended in 1858, demands by materialmen for supplies, repairs, or other necessities, furnished to a domestic ship, can be enforced only by proceedings *in personam*. The intention of the amendment being, to leave liens depending upon state laws, to be enforced by the state courts." These cases do not seem to be based on any principle of the maritime law, and can hardly fail to be reconsidered at some future time.

§ 269. The English Admiralty has, for a long course of years, been prohibited the exercise of this jurisdiction. But it is perfectly well settled in this country, that contracts of this sort are maritime contracts, and may be enforced in the admiralty. It was first decided in the Supreme Court, in the case of the *General Smith*, in which Judge Story, delivering the opinion of the court, says, "No doubt is entertained by this court, that the admiralty rightfully possesses a general jurisdiction in cases of materialmen; and if this had been a suit *in personam*, there would not have been any hesitation in sustaining the jurisdiction of the court."

And the same principle has also been acknowledged and decided in numerous other cases.²¹

§ 270. Whenever the debt for materials, &c., is by law, no matter what law, or by contract, a lien on the vessel, then the vessel may be proceeded against *in rem*; and in all cases the contracting parties may be proceeded against *in personam*.²²

§ 271. By the civil law, those who built, repaired, or supplied a ship, had a privilege or lien upon the ship herself, for the

²¹ 21 How. 4; *Maguire v. Card*, id. 248; *The St. Lawrence*, 1 Black. 522.

²² *The General Smith*, 4 Wheat. 438; *DeLovio v. Boit*, 2 Gal. 398; *Hale v. Washington Ins. Co.* 2 Story, 176; *The Centurion*, Ware, 477; *Sheppard v. Taylor*, 5 Pet. 375; *Plummer v. Webb*, 4 Mason, 380; *Peyroux v. Howard*, 7 Pet. 324; *Davis v. A New Brig*, Gilp. 477; *Harper v. A New Brig*, id. 540; *The Nestor*, 1 Sum. 73; *The Robert Fulton*, 1 Paine, 620; *The St. Jago de Cuba*, 9 Wheat. 409; *Ramsay v. Allegre*, id. 12, 611; *Zane v. The President*, 4 Wash. 453; *The Alexander*, 1 W. Rob. 288; *The Zodiac*, 1 Hag. Ad. R. 320; *The Jerusalem*, 2 Gal. 345; *Stevens v. The Sandwich*, Pet. Ad. 233, note; *Ransom v. Mayo*, 3 Blatchf. 70; *Wortman v. Griffith*, id. 528.

²³ *The General Smith*, 4 Wheat. 438.

amount of the debt thus contracted in creating her, or in keeping up her existence and usefulness. The same principle is incorporated into all the codes of maritime law, and is a well settled rule of the general maritime law, and, as such, was acted on by the English Admiralty for centuries, till it was overthrown in the time of Charles II. by the courts of common law, which acknowledge no such privilege or lien, and only recognize the common law lien of the mechanic, who, by virtue of his possession, and not otherwise, is allowed a lien. The maritime lien is not accompanied by possession, and does not, in any manner, spring from possession. It is a sort of proprietary interest, springing from the nature of the transaction and the beneficial service rendered to the ship, the great agent of maritime commerce, and it follows her for a longer or shorter period, into whosoever hands she may go."

§ 272. The civil law, the general maritime law, and the particular maritime codes, without exception, extend this lien or privilege to all ships and vessels, without any distinction between foreign and domestic ships." Indeed, it is not easy to see how any difference can exist in principle; if one is a ship or vessel, so is the other, if one is a maritime contract, so must be the other, and the same law, and the same reason, which gives a lien in the one case, gives it in the other. It is for service, labor, materials and supplies, furnished to the ship, and in some sort made a part of her, for her benefit, that the lien attaches to her; still, the Supreme Court of the United States, in the case of the *General Smith*, made a broad distinction, and declared that, unless the local law of the particular state where the supplies, &c., are furnished, gives a lien, there is no lien in the case of domestic vessels. Since that case, numerous other cases repeated and enforced this distinction; and it was so well settled as practically to constitute a part of the law of the American Admiralty, but more recently the Supreme Court has

³⁰ Dig. 42, 5, 6; id. 134; *The Zodiac*, 1 Hag. Ad. 320, 325; *The Neptune*, 3 id. 136; *Edw. Juria*. 93-109; 1 *Roll. Ab.* 533; *Cro. Car.* 296; *Buxton v. Snee*, 1 *Ves. Sen.* 154; *Hoare v. Clement*, 2 *Show.* 338; *Abb. on Ship.* 143, 149, *n*; *The Nestor*, 1 *Sum.* 73, 81; *The Marion*, 1 *Story*, 73; *The Druid*, 1 *W. Rob.* 398; *Harmer v. Bell*, 22 *Eng. Law & Eq.* 72; *post*, § 290-305.

³¹ *The Nestor*, 1 *Sumn.* 79.

refused to entertain jurisdiction of cases of maritime lien where the lien was created by a state law. It is, however, believed, that whenever the question shall come before the Supreme Court and be fully considered by that court, after argument, the distinction between foreign and domestic vessels, and liens by state laws and by the maritime law, will be found to be no part of the law of the American Admiralty, as it is not of the maritime law. It is no better settled now than the doctrine of the Thomas Jefferson was for a quarter of a century, but that doctrine is now obsolete and is called by the Supreme Court, in the case of the *Belfast*, 7th Wallace, 639, a "strange proposition." This may be stranger in less time. The mere residence of the owner would seem to have even less relation to maritime subject matter than the tide and the other pretexts of the time of Lord Coke. It is believed, that the decisions of the English common law courts insensibly influenced the decision of the Supreme Court, although the ground upon which the court puts the decision is by no means the English ground. The court seems to say that liens on domestic ships are subject to the local law of the place where the ship belongs, and must be enforced by that law. It has not always been held that the local legislatures have the power to repeal or modify the provisions of the general maritime law. The contrary has been held by Judge Story." If they have the power to declare what shall be the law of their own tribunals, between their own citizens, it is clear that they are not authorized to declare what shall be the law of the United States, in cases of admiralty and maritime jurisdiction in the courts of the United States."

§ 273. Indeed, it seems quite clear that the states, as such, have no ships and vessels; and that all are ships and vessels of the

²² *The Chusan*, 2 Story C. C. R. 456, 462; *Ashbrook v. The Golden Gate*, 5 Am. Law. Reg. 148.

²³ *The Calisto*, Davis' R. 29; *Davis v. Child*, id. 71; *The Hull of a New Ship*, id. 199; *The General Smith*, 4 Wheat. 438; *Waring v. Clarke*, 5 How. 475, 491, 495; *Read v. The Hull of a New Brig*, 1 Story, C. C. R. 244; *Peyroux v. Howard*, 7 Pet. 324; *Golden v. Prince*, 8 Wash. 313; *Davis v. A New Brig*, Gilp. 473; *The Stephen Allen*, Blatchf. & H. 175; *Thomas v. The Kosciusko*, 11 N. Y. Leg. Obs. 88; *The Teller*, id. 44; *The Alida*, 1 Abb. Ad. 165; *The Infanta*, id. 263; *vide*, § 270; and cases cited.

United States, and that all American vessels are domestic vessels. The port where the vessel belongs has no necessary reference to state, or other limits. It is that port, at or nearest to which the owner, if there be but one, or if more than one, the husband or acting and managing owner usually resides, and the ports, as such, are ports, not of the states, but of the United States, and the states have no admiralty and maritime jurisdiction. The states are, for certain purposes, foreign to each other, but in no sense are they foreign to the United States.

§ 274. Ships and vessels being usually owned in shares by several persons, who are not otherwise partners,* it is evident that often dissensions may arise between the owners as to the employment of the ship. In such cases, one party may employ the ship, on giving security to the other. The Court of Admiralty has jurisdiction to enforce the law between the part owners, and to compel the one or the other party to give the required security. Cases of licitation or sale, for the purpose of partition, are also within the power of the American Admiralty, as they are of the European maritime courts, out of England."

§ 275. The admiralty has jurisdiction of all matters that concern owners and proprietors of ships, as such. This embraces a large number of cases of almost every description. For the torts and contracts of the master, as such, the owners are liable; for whatever is a lien upon the vessel, the owners are liable, by virtue of that lien, to the extent of the value of the vessel, and, in many cases, to the whole extent of the demand. For the contracts of each other as owners, they are liable to third persons to their full

* The owners of a ship are, generally speaking, tenants in common, yet there may be a special partnership between them, in the ship, as well as in the cargo, in regard to a particular voyage or adventure, *Mumford v. Nicoll*, 20 Johns. 611.

" *Skrine v. The Hope*, Bee, 2; *Willings v. Blight*, 2 Pet. Ad. R. 288; *Stevens v. The Sandwich*, 1 id. 283; *The Orleans v. Phœbus*, 11 Pet. 175; *Story on Part.* 435, 436; *The Elizabeth and Jane*, 1 W. Rob. 278; *Conk. Treat.* 2d ed. 156; *Dunlap Prac.* 67, 69; *Davis & Brooks v. The Seneca*, Gilp. 11, 34; *The Apollo*, 1 Hag. Ad. R. 306.

The case of the *Seneca*, (Gilp. 10,) was reversed by Judge Washington, in an able opinion, reported in 18 *American Jurist*, 486, and 6 *Penn. Law Jour.* 213.

extent *in solido*; and all these are cases of admiralty and maritime jurisdiction."

The admiralty has also jurisdiction of possessory and petitory actions, and of proceedings on the part of the owners for the removal of the master."

§ 276. Possessory actions are actions to recover ships or other property, to which a party is entitled by virtue of a maritime right. They are analogous to the action of replevin or detinue at the common law, in which the specific property is recovered instead of damages. These actions are brought by owners to try the right to the possession of a ship, by master or owners to recover possession. The English Admiralty Court is reluctant to take jurisdiction of such cases, and always confines itself to cases where possession is withheld from the party having the legal paper title to the ship. If the proprietor's right is disputed, the court will not attempt to decide upon it. In this country, the jurisdiction of the admiralty over all this class of cases is well settled."

§ 277. "Ships were originally invented for use and profit, to plough the seas, not to lie by the walls." The ship being finished and furnished, her first want is a ship's company to navigate her. Without their strength, and knowledge, and skill, and intrepidity, she must rot at the wharf, or be hurried to destruction. The ship, that by the agency of the most uncertain, capricious, and powerful elements, moves with a certainty and a security only surpassed by the beauty of her appearance and the grace of her motion, when

³⁵ *Ante*, § 82; *Godolph.* 43; *Higgins v. U. S. Mail Steamship Co.* 3 *Blatchf.* 282; *The Majestic*, 12 *N. Y. Leg. Obs.* 100; *The Grafton*, 1 *Blatchf.* 175; *Vose v. Allen*, 3 *Blatchf.* 289; *Church v. Shelton*, 2 *Curtis C. C. R.* 271; *Knox v. The Minetta*, *Crabbe*, 534; *The Rebecca*, *Ware*, 188; *House v. The Lexington*, 2 *N. Y. Leg. Obs.* 4; *Howland v. Greenway*, 23 *How.* 491; *ante*, §§ 50, 105, 126, 151; 2 *Brown Civil and Ad.* 131; *Davis & Brooks v. The Seneca*, *Gilp.* 11; *Stinson v. Wyman*, *Daveis' R.* 172; *The Paragon*, *Ware*, 322.

³⁶ *The See Reuter*, 1 *Dod.* 22; *The Martin of Norfolk*, 4 *C. Rob.* 240; *vide, post*, § 311.

³⁷ *The Watchman*, *Ware*, 233; *The Sisters*, 4 *Rob.* 275; *The Martin of Norfolk*, *id.* 293; *Davis v. The Seneca*, 18 *Am. Jur.* 496; *The Experimento*, 2 *Dod.* 42; *The Warrior*, *id.* 288.

³⁸ 1 *Molloy*, 308.

under the control of a well appointed crew,—becomes in the hands of unpractised landmen, the victim of the first peril, and their efforts only urge her the sooner to inevitable destruction. The service of the ship's company is, therefore, the maritime service which is entitled to the highest consideration and the greatest favor; and the jurisdiction of the admiralty in cases of mariners' wages, is settled by a course of decisions of unbroken authority during centuries. The more fanatical enemies of the admiralty jurisdiction have not, however, failed to perceive that their principles are as fatal to this class of cases as to many others, and have accordingly declared that the admiralty has been permitted to retain these cases only from usage springing from necessity or policy. The jurisdiction, however, is firmly established in this country on principle, and all cases of mariners' wages are, *par excellence*, maritime cases, and subject to the jurisdiction of the admiralty; and this includes whaling, sealing and fishing voyages, and demands for subsistence, expenses of cure, &c., which are in the nature of wages.³⁹ And by the acts passed during the reign of the present queen, the jurisdiction of the English admiralty is equally extensive.

§ 278. The term mariner includes all persons employed on board ships and vessels, during the voyage, to assist in their navigation and preservation, or to promote the purposes of the voyage. Masters, mates, sailors, surveyors, carpenters, coopers, stewards, cooks, cabin boys, kitchen boys, engineers, pilots, firemen, deck hands, waiters,—women as well as men,—are mariners.⁴⁰

§ 279. The mariners of the public vessels of the nation cannot

³⁹ *Anta*, § 81; *Dunlap Prac.* 20, 24, 26; *The Sydney Cove*, 2 *Dod.* 11; *Wilson v. The Ohio*, *Gilp.* 505; *The May Queen*, *Sprague*, 588; *The George*, 1 *Sumn.* 150; *Martin v. Acker*, *Blatchf. & H.* 279; *Thackarey v. The Farmer*, *Gilp.* 526; *vide*, *Foster v. The Pilot No. 2*, 1 *Am. Law Reg.* 403; *Dunlap Prac.* 59, 60, 61, 62; *Macomber v. Thompson*, 1 *Sum.* 384; *Pratt v. Thomas*, *Ware*, 437; *Sheppard v. Taylor*, 5 *Pet.* 675; *Harden v. Gordon*, 2 *Mason*, 544; *Plummer v. Webb*, 4 *Mason*, 380; *Smith v. The Pekin*, *Gilp.* 203.

⁴⁰ *Robinett v. The Exeter*, 2 *Rob.* 261; *Willard v. Dorr*, 3 *Mason*, 91; *Shaw v. The Lethe*, *Bee*, 424; *The Lord Hobart*, 2 *Dod.* 104; *Atkyns v. Burrows*, 1 *Pet. Ad.* 244; *The Leonidas*, *Olc.* 12; *vide*, *The Louisiana*, 2 *Pet. Ad.* 268; *Trainer v. The Superior*, *Gilp.* 514; *vide*, *Gurney v. Crockett*, *Abb. Ad.* 490; *The Harriet*, *Olc.* 229; *Dunlap Prac.* 59.

proceed against them in the admiralty, for the reason that the government or sovereign cannot be sued. It is not because the court has not jurisdiction, but because there is no right of action against the government or its property. In like manner, the mariners of a public vessel of a foreign power within our jurisdiction, are not allowed to proceed against the vessel or officers. This is not because they are simply foreigners, but, because by the common law and universal consent of nations, the person, the ministers, and the vessels of a sovereign, retain their independent character, and their consequent immunities, wherever they rightfully are, in times of peace.⁴¹

§ 280. When an American seaman is discharged with his own consent, in a foreign country, or the ship is sold in a foreign country, and her company discharged, and three months extra pay is, by law, required to be deposited in the hands of the consul, of which two-thirds are to be paid to the seamen, no action at common law will lie to recover these extra wages against the master if he neglect to pay them to the consul, but the admiralty will entertain a suit, as well on the part of the seamen as on the part of the United States, to recover such extra wages. The jurisdiction in similar cases is denied in England.⁴²

§ 281. In the earliest periods of maritime commerce, a common form of compensating the mariner was by giving him, in one way or another, an interest in the success of the voyage. In modern times, fixed pecuniary wages have taken the place of a share of the earnings, except in cases of whaling, fishing, and sealing voyages, in which the ancient mode of compensation still prevails. In England, before her late acts restoring the admiralty jurisdiction, none but contracts in the usual form were allowed to be prosecuted

⁴¹ The Lord Hobart, 2 Dod. 100; *Ellison v. The Bellona*, Bee, 112; *Pierre de Moites v. The South Carolina*, id. 422; *Dunlap Prac.* 64; *The Exchange v. McFaddon*, 7 Cranch, 147; *The Pizarro* *ads. Matthias*, 10 N. Y. Leg. Obs. 97; *Wheat. Int. Law*, 149.

⁴² Act of Feb'y, 28, 1803, concerning Consuls, § 8; *Dunlap Prac.* 62, 63; *Emerson v. Howland*, 1 Mason R. 45; *Orne v. Townsend*, 4 Mason R. 541; *Pool v. Welsh*, Gilp. 193; *The Courtney*, Ed. Ad. R. 239; *The Dawn*, *Daveis' Rep.* 12. See form of libel No. 97, Appendix.

in the admiralty, and a fixed rate of pecuniary wages was held to be the usual form. There cannot be a more striking illustration of the caprice and want of rational principle which characterized the prohibitions of the English common law courts."

§ 282. There have been attempts in England and in this country, to establish an exemption in favor of the seamen of foreign merchant ships. It has been sometimes placed on the ground of the comity of nations,—sometimes on the fancied ground that a vessel is part of the territory of the nation to which she belongs,—sometimes on the ground that there can be no jurisdiction in such cases except by the consent of the consul, or other diplomatic representative of the foreign nation to which the seamen or the vessel belongs,—all of which are fallacious. There is no such comity of nations,—nothing within the territory of a nation is without its jurisdiction, and no officer of a foreign government can grant or destroy the jurisdiction of our courts. Some exemptions are established by the constitution, some by treaty, and some by the established and immemorial usage of nations, and they do not apply to persons and property engaged in the ordinary pursuits of commerce. In the present state of international intercourse and commerce, all persons in time of peace, have the right to resort to the tribunals of the nation where they may happen to be, for the protection of their rights. The jurisdiction of the courts over them is complete, except when it is excluded by treaty," though sometimes, as in the case of foreign seamen, they will refuse, from considerations of expediency, to exercise their jurisdiction."

§ 283. During the building, fitting, furnishing, supplying, loading and unloading, and repairing of a vessel, it is necessary that she should lie at a wharf, dock or pier, to be most conveniently

⁴² *Cleirac*, 66, 188; *The Juliana*, 2 Dod. 509; *The Fairplay*, Blatchf & H. 186; *Duryee v. Elkins*, Abb. Ad. 529.

⁴³ *Dunlap Prac.* 66; *The Genesee Chief v. Fitzhugh*, 12 How. 443; *Glass v. The Betsey*, 3 Dal. 6; *Jecker v. Montgomery*, 13 How. 498; *Patch v. Marshall*, 1 Curt. C. C. R. 452; *Ante*, § 14.

⁴⁴ *Davis v. Lealie*, Abb. Ad. 123; and cases cited. *Willendson v. The Forsoket*, 1 Pet. Ad. R. 197; *The Infanta*, Abb. Ad. 263; *Buoker v. Klorkgeter*, id. 402; *Graham v. Hoskins*, Olo. 224; *The Napoleon*, id. 208.

and safely accessible. The pecuniary charge in the nature of rent to which vessels are liable for the use of a dock or wharf, is called wharfage or dockage, and is the subject of admiralty jurisdiction. The master and owner of the ship and the ship herself may be proceeded against in admiralty to enforce the payment of wharfage, whether the vessel lie alongside the wharf, or at a distance, and only use the wharf temporarily for boats or cargo. Of the same nature, is the charge for storing the sails, or other furniture, in a store-house on shore, and that kind of rent or storage is also the subject of a maritime action.⁴⁶

§ 284. For the purposes of being finished and loading and unloading, under many circumstances, it is necessary or expedient that the vessel should be moored at a distance from the land, and that her tackle, apparel and furniture, her cargo and supplies, her passengers and crew should be transported in lighters, barges or other small craft. The service thus rendered is maritime, and lightermen, bargemen and water men, who thus render service to a vessel, are all entitled to resort to the admiralty to enforce the payment of their demands, by proceeding *in personam* against the master, or *in rem* against the vessel herself.⁴⁷

§ 285. To enable the vessel safely to transport her cargo, it is of the first importance that it be well stowed, that the vessel may keep her trim, that one portion of cargo may not injure another by collision, by leaking, by steam, heat, odor, and that storms may not break it loose and destroy it. The business of stowing ships has fallen into the hands of a separate class of artisans, known as stevedores, — French, *arrimeurs*. Their services are maritime, and they may enforce the payment of their demands by suits *in rem* against the vessel, or *in personam* against the master or owners. Stevedores are also often employed to break out and discharge the cargo of a vessel, at the port of delivery. Doubts have been expressed whether this be a maritime service. It seems to be as necessary to the vessel, and to her commercial and maritime

⁴⁶ *Gardner v. The New Jersey Pet.* Ad. R. 223; *Ex Parte Lewis*, 2 Gal. 483; *Johnson v. The M'Donough*, Gilp. 101; *The Phœbe*, Ware, 354.

⁴⁷ *Thackarey v. The Farmer*, Gilp. 526; MSS. decision of Judge Betts.

purposes, both in completing a past voyage and in getting ready for a new one, that her cargo should be discharged, as it is that it should be taken in. And the same principle which allows the sailor and the lighterman, him that scrapes her bottom, as well as him that sets up her rigging or paints her sides, to resort to the admiralty, will also allow the same privilege to that class of men who perform that crowning act of maritime commerce for which all others labor, to which all other acts are subordinate, on which the right to freight depends, and which is, in fact, the great purpose, and the only ultimate purpose, of a ship, viz., the delivery of the cargo."

§ 286. The primary and principal purpose of a ship is transporting cargo for hire. *Contracts of affreightment* are, therefore, within the admiralty and maritime jurisdiction. If the ship, her master and owners, do not faithfully and fully perform their contracts to carry goods or passengers, the ship is liable *in rem*, and the master and owners *in personam*, in admiralty, for the damages; and in the same manner if the freight be not paid, the master and owners of the ship may proceed, in the admiralty, against the goods *in rem*, or against the party liable for the freight *in personam*, to recover the freight. All agreements for the carriage of persons or property by vessels are contracts of affreightment, and all hire or reward for the use of vessels is freight, and these agreements may be in writing or merely verbal. The written acknowledgment of the reception on board of a particular vessel, of a particular quantity or parcel of goods, to be carried to a particular place, is a bill of lading. There is a usual, but not a necessary form, of a bill of lading, and any paper, containing the substantial elements of the usual bill of lading, is a bill of lading. Shipments are often made without any bill of lading, or written evidence of the transaction, or of the liabilities of the parties, and the law and the jurisdiction is the same as if the whole were in writing. It is the fact that the goods are shipped, and not the written acknowledgment of it, — the obligation to carry them safely, and not the written contract, — that creates the liability and fixes the jurisdiction of the court."

⁴⁸ Contra, *The Joseph Cunard*, Olc. 120; *ante*, § 270.

⁴⁹ *De Lovio v. Boit*, 2 Gall. 898; *Drinkwater v. The Spartah*, Ware, 149; *The Rebecca*, id., 188; *The Phebe*, id. 263; *The Volunteer*, 1 Sumn. 551; *Certain Logs of*

§ 287. When a ship, or a specified portion of it, is hired out in mass for a voyage, or a portion of a voyage, for a gross sum, or so much a ton, a voyage, a month, or the like, the contract is usually called a chartering of the vessel. A charter party, strictly, is a deed in two parts divided, *charta partita*. When not under seal it is called a memorandum of a charter. When not in writing it is not properly a *charta*, but it is, nevertheless, usually spoken of as a charter. The jurisdiction and the law of the American Admiralty is the same, whether the agreement be a deed, a writing, or a mere verbal agreement. It is the substance of the undertaking of the party, and not the form of words that they use, that creates the liability and confers the jurisdiction.⁵⁰ The jurisdiction of the admiralty over cases of hiring of vessels, and the carriage in vessels of persons and property, is too well settled to be questioned. The principles of law which control the rights and duties of the parties to such contracts will be found in the various maritime codes and in the commentaries upon them, in the treatises of Holt and Abbott, and in the reported cases in our courts.⁵¹

§ 288. It has been made a question whether contracts for the transportation of passengers were within the jurisdiction of the admiralty.⁵² There is nothing in principle to distinguish, in this respect, the transportation of human beings from that of other portions of animated nature. Men, as well as birds and beasts and fishes, have, in all ages, been objects of maritime transportation. From the earliest periods, ships, laden with soldiers, convicts, and emigrants, have traversed all the oceans and seas and other navigable waters. Naulage, nolis, from *naulum*, "the freight or fare paid for passage on the sea in a ship," is found in the earliest

Mahogany, 2 id. 589; 3 Kent's Com. 220; Brackett v. The Hercules, Gilp. 184; Poland v. The Spartan, Ware, 134, 138; Giles v. The Cynthia, Pet. Ad. R. 206; The Huntress, Davis' R. 82; The Casco, id. 184; The Flash, Abb. Ad. 67; The Gold Hunter, Blatchf. & H. 300; The Leonidas, Ols. 12; ante, §§ 48, 52, 94, 126, 151.

⁵⁰ Raymond v. Tyson, 17 How. 59; post, § 288.

⁵¹ Drinkwater v. The Spartan, Ware, 156; The Tribune, 3 Sumn. 144; Abbot on Ship. 816; 3 Kent's Com. 204; The Phebe, Ware, 263; Morewood v. Enequist, 28 How. 491; The Eli Whitney, 1 Blatchf. 360; ante, §§ 79, 94, 126, 151.

⁵² Brackett v. The Hercules, Gilp. 184.

books. "Passengers are those who pay *freight* for the carriage of their persons and baggage."⁴³ Passage money is particularly mentioned as within the admiralty jurisdiction, by Godolphin.⁴⁴ "Causes, civil and maritime, which respect or concern the sea, or passage over the same," are specified in the commission of the Vice-admiralty Judges.⁴⁵ "Passenger ships and vessels," are regulated by acts of Congress, in most important particulars, and the business of the transportation of passengers for freight, is now one of the most important and lucrative branches of maritime commerce. The rights of passengers, in various forms, have been often the subject of suits in admiralty, in the Southern District of New York; and the jurisdiction is there fully established, both in the District and Circuit Court.⁴⁶

§ 289. Cases for *pilotage* are cases of admiralty and maritime jurisdiction.

The name of pilot, or steersman, is applied either to a particular officer serving on board the ship during the course of the voyage, and having the charge of the helm and of the ship's route, or to a person taken on board at a particular place, for the purpose of conducting a ship through a river, road, or channel, or from, or into port. In the first case, the pilot is merely a mariner, and his rights are precisely the same as those of any other mariner. In the second case, the nature of the service is eminently maritime, and of a character especially entitled to favor. The pilot may proceed *in rem* against the vessel, or *in personam* against the owner or master. The jurisdiction of the admiralty is fully established in this country and in England, and on the continent of Europe.⁴⁷

River and harbor pilotage, in English maritime affairs, is called

⁴³ Cleirac — Termes de la Marine, 510; *vide*, The Consulat. 68, and the Continental Codes, *passim*; Pard. Droit Com. § 704.

⁴⁴ *Ante*, § 106.

⁴⁵ *Ante*, § 158.

⁴⁶ Act of March 2d, 1819; The *Moses Taylor*, 4 Wall. 411; *Marshall v. Bazin*, 7 N. Y. Leg. Obs. 342; *Cobb v. Howard*, 3 Blatchf. 524; The *Pacific*, 1 Blatchf. 569; The *Aberfoyle*, *id.* 360; *Walsh v. The H. M. Wright*, Newb. 494.

⁴⁷ The *Anne*, 1 Mason, 508; The *Nelson*, 6 Rob. 227; The *Benjamin Franklin*, *id.* 350; The *Bee*, 2 Dod. 498; *Hobart v. Drogan*, 10 Pet. 108; *Truesdale v. Young*, Abb. Ad. R. 391; *Love v. Hinckley*, *id.* 436; The *Wave*, Blatchf. & H. 235; *Dunlap's Prac.* 59; Ad. Rule 14.

loadmanage, from loadsman, or lodesman, a kind of pilot established for the safe conduct of ships and vessels in and out of harbors, or up and down navigable rivers."⁵⁸

§ 290. A ship is, of necessity, a wanderer. She visits places where her owners are not known, or are inaccessible. The master is not usually of sufficient pecuniary ability to respond to the demands of the voyage, and he is the fully authorized agent of the owners. These and other kindred characteristics of maritime commerce have established the necessity of making the ship herself security, in many cases, to those who have demands against the master or owners.⁵⁹ The contracts and the torts of the master and owners are, therefore, in numerous cases, a lien upon the vessel herself. All these are maritime liens, whether created by actual hypothecation, by implication, or by operation of law.⁶⁰

Maritime Liens. Wherever there is a maritime lien, it may be enforced in the admiralty.⁶¹ Maritime liens differ from common law liens in a very important point. A common law lien is always connected with a possession of the thing; it is simply a right to retain. On the other hand, a maritime lien does not in any manner depend upon possession. It is a right affecting the thing and giving a sort of proprietary interest in it, and a right to proceed against it, to recover that interest. The admiralty has jurisdiction in all such cases. Wherever there is a maritime lien upon property, it adheres to the proceeds of that property, into whose hands soever they may go, and those proceeds may be attached in the admiralty.⁶²

§ 291. *Maritime loans* are within the admiralty and maritime jurisdiction, and have been so considered from the earliest periods, and in all commercial nations. The necessities of commerce so

⁵⁸ Falconer's Dictionary.

⁵⁹ The U. S. v. The Malek Adhel, 2 How. 236.

⁶⁰ Coote's Prac. 8.

⁶¹ Drinkwater v. The Spartan, Ware, 149; The Havana, Sprague, 402; Davis v. Leslie, Abb. Ad. 123.

⁶² The Rebecca, Ware, 188; The Phebe, id. 263; The Paragon, id. 322; Cutler v. Rae, 7 Howard, 731; Brackett v. The Hercules, Gilp. 185; Harmer v. Bell, 22 Eng. Law & Eq. 72; Coote's Prac. 8-7; Roccus, 81, 82.

often call for such loans, that cases springing out of that class of transactions abound wherever maritime commerce exists. In the civil law, and in the various maritime codes, and in the elementary writings of the most learned commentators, the law of these loans, principally known by the name of *bottomry* and *respondentia*, holds a prominent place."

§ 292. *Bottomry loans* are those in which a sum of money is loaned for a particular voyage, at maritime interest, on the security of the ship, the ship and freight, or the ship, freight, and cargo, on condition that if the voyage be performed safely, the money and interest shall be paid; and if she do not so arrive, but is lost by a peril of the sea, then that nothing shall be paid. These are within the admiralty jurisdiction in England, as well as in continental Europe and in this country."

§ 292 *a*. But if it be stipulated that the lender shall not incur maritime risk, the admiralty has no jurisdiction, although the loan be such that without such stipulation it would have had jurisdiction."

§ 293. *Respondentia bonds* are bonds given to secure a loan, made on the cargo, instead of the ship. Loans on *respondentia* are also loans at maritime interest, and are secured by the goods on their safe arrival, but put both the principal and interest at risk, and give the lender no claim for any payment whatever if the goods

⁶⁸ The Duke of Bedford, 2 Hag. Ad. R. 294; The Kennerley Castle, 3 Hag. Ad. R. 1, 7; The Vibilia, 1 W. Rob. 1; The Tobago, 5 Rob. 194; The Packet, 3 Mason, 255; The Zephyr, id. 341; The Draco, 2 Sum. 157; Conard v. The Atlantic Ins. Co., 1 Pet. 386, 431; The Jerusalem, 2 Gal. 191; De Lovio v. Boit, id. 398; Wilmer v. The Smilax, 2 Pet. Ad. R. 295; Boreal v. The Golden Rose, Bee, 131; Putnam v. The Polly, id. 157; Sloan v. The A. E. L. id. 250; The Lavinia v. Barclay, 1 Wash. 49; Hurry v. The John and Alice, id. 293; The Aurora, 1 Wheat. 96; Murray v. Lazarus, 1 Paine, 572; The Mary, id. 671; Davis v. Child, 3 N. Y. Leg. Obs. 147.

⁶⁹ The Draco, 2 Sum. 157; The Atlas, 2 Hag. Ad. R. 48; The Mary, 1 Paine, 671; Wilmer v. The Smilax, 2 Pet. Ad. R. 295, note; The Packet, 3 Mason, 264; The Virgin, 8 Pet. 538; Abbott on Ship. 176 n. 2; Knight v. The Attila, Crabbe, 326; Pet. U. S. Dig. Bottomry; Curtis' Dig. Bottomry; Ed. Ad. Jur. 55; ante, §§ 48, 52, 94, 126, 151.

⁷⁰ Maitland v. the Atlantic, 1 Newb. 514.

be lost. The jurisdiction of the admiralty over them has never been denied in the courts of the United States."

§ 293. *a.* The admiralty has also jurisdiction of a loan negotiated by the master, to repair damages done to the vessel on the high seas." But it has been held that it has not jurisdiction of a loan made in port, to enable the borrower to buy a vessel," nor of a claim by an agent of a steamer against its owners, for the balance of an account of moneys paid to their use, for supplies, repairs, and for commissions, such transactions being held to be not maritime contracts."

§ 294. The contract of *insurance* against the perils of the sea, is one that was suggested by, and sprang from the hazards peculiar to ships and vessels in the pursuits of maritime commerce. In like manner, the rights, duties, and liabilities which are its characteristics, have always been regulated by the maritime law. Indeed, the investigation of a case of marine insurance, is but an inquiry into the facts, transactions, and perils of navigation, and the application of the principles and rules of the maritime law. It has always and everywhere been considered a maritime contract, and nowhere out of England has it ever been excluded from the admiralty jurisdiction. And in all the grants of jurisdiction, even in England, it is specially mentioned as a matter of Admiralty jurisdiction.

In the Admiralty Court of Scotland, jurisdiction of cases of marine insurance is undisputed. There went up to the House of Lords, in 1813 and 1814, eight cases of insurance, commenced and decided in the Scotch Admiralty, involving questions of unseaworthiness from bad construction and from old age, cases of concealment and false representation, cases of the right to abandon, the effect of abandonment, and of its acceptance, insurances of vessels, of freight, and of cargo. A very large portion of the masterly treatises on the maritime law of Roccus, of Cleirac, of Valin,

⁶⁶ 3 Kent. Com. 357; Franklin Ins. Co. v. Lord, 4 Mason, 248; Conard v. The Atlantic Ins. Co. 1 Pet. 386; Pet. Dig. Bottomry.

⁶⁷ Bulgin v. The Rainbow, Bee's Ad. R. 116.

⁶⁸ The Perseverance, Blatchf. & H. 385.

⁶⁹ Minturn v. Maynard, 17 How. 477.

of Emerigon, of Boulay-Paty, and Pothier, is devoted to the law of insurance, and the celebrated anonymous work, the *Guidon of the Sea*, is but a commentary on a policy of insurance, in which all the principles of the maritime law are found in the law of insurance. It is not easy to find a reason why the admiralty should have cognizance of bottomry contracts, and not of policies of insurance, both of which respect maritime risks, injuries, and losses. A bill of lading is but a policy of insurance, guaranteeing the safety of goods against all risks, except the perils of the seas, and these are covered by insurance. A reference to the great compilation of Pardessus, (see the index, titles "*Assurance Mutuelle*," and "*Assurance à prime*,") will discover in the maritime codes of five and twenty states and cities, the law of marine insurance holding an important and unquestioned position in the maritime law of all commercial communities, from the earliest periods of insurance. It is, indeed, of all contracts, the most purely maritime.

The question of the jurisdiction of the American Admiralty, on policies of insurance, has never been submitted to the Supreme Court of the United States. It has, however, been distinctly presented, and the jurisdiction sustained by the Circuit Court, on principle, in the memorable case of *De Lovio v. Boit*, in which the admiralty jurisdiction was so fully and learnedly discussed, and again in the case of *Andrews v. The Essex Fire and Marine Insurance Company*."

§ 295. Cases of *average contribution* are cases of maritime jurisdiction. The whole subject is the creation of the maritime law, and is, perhaps more than any other subject, in all its relations and in every respect, purely maritime; and from the time of Rhodian laws to the present, all codes and commentators have held the same language on the subject. When, in peril of shipwreck, a sacrifice is made of a portion of the property thus exposed, to save the residue, every person whose property is saved is liable to contribute, in proportion to his goods saved, to make up the loss of those

¹⁰ *De Lovio v. Boit*, 2 Gal. 898; *Andrews v. The Essex Fire and Marine Ins. Co.* 3 Mason 16; *Peele v. The Merchants Ins. Co.* id. 27; *Hale v. The Washington Ins. Co.* 2 Story C. C. R. 176; *The Gloucester Ins. Co. v. Younger*, 2 Curt. C. C. R. 322; *ante*, §§ 48, 107, 116, 151.

whose goods have been sacrificed for the common benefit. This is called an average contribution. So entirely is this subject under the regulation of the maritime law, that it has been held that common law courts have no jurisdiction of it. And to bring it within the jurisdiction of the common law courts in England, as well as to make consignees liable, the practice has become general of requiring those who receive the goods to execute a bond before taking their goods, binding them to pay their shares. It is now, however, well settled that "the contribution may be recovered either by a suit in equity, or by an action at law, instituted by each individual entitled to recover, against each individual that ought to pay for the amount of his share."¹¹ The subject matter of a demand for contribution being maritime, it is clearly a case of admiralty and maritime jurisdiction, and the court may resort to such of its modes of proceeding as may be appropriate to give the relief. If the demand be a lien upon any property within the reach of the court, the proceeding may be *in rem*. If the party liable to pay be within the reach of the court, the proceeding may be *in personam*.¹²

¹¹ Domat, lib. 11, tit. 9, § 2, art. 6, 9; Pard. Droit Com. 742; Boulay Paty, 2; Valin, 211; Abbot, Ship. 507-8; Birkley v. Presgrave, 1 East. 220; 3 Kent. Com. 244; Scaif v. Tobin, 3 B. & Adol. 523; Dunlap Prac. 57; The Sybil, 4 Wheat. 98; The Palmyra, 12 id. 16; Rossiter v. Chester, 1 Doug. Mich. 154; *ante*, §§ 52, 106; Cutler v. Rae, 7 How. 729; Dupont v. Vance, 29 How. 171.

¹² Dike v. The St. Joseph, 6 McLean, 578; Mutual Safety Ins. Co. v. Cargo of The George, Olc. 89; The Leonidas, Olc. 12. *Vide* Cutler v. Rae, 7 How. 729.

In Cutler v. Rae the case presented in the pleadings, as reported, was this: A vessel bound from New Orleans to Boston, with an assorted cargo, was overtaken by a storm, and was run ashore by the captain to save the lives of those on board, and to preserve the cargo, which would, otherwise, have been lost. By this voluntary stranding the vessel was totally lost and the cargo saved to the amount of \$5,400. It was received by the defendant, who was the consignee—not the owner. The plaintiff brought his action for an average contribution. The defendant admitted these facts, but denied his liability as matter of law.

This, on all the principles which the courts have upheld for half a century, and which have been acknowledged for centuries in all the maritime courts of continental Europe, is a case of admiralty and maritime jurisdiction—nothing can be more thoroughly maritime or more universally regulated by the maritime law.

The question of legal liability was entirely separate from any question of jurisdiction. The question was, whether the defendant, being consignee and not owner, and having received the property as wrecked—damaged and saved property—and not as preserved property, and without having undertaken, by

§ 296. The jettison of cargo may give rise to other rights besides those of average contribution. Many contingencies arise in the progress of a voyage, which render it necessary to appropriate cargo to the use of the ship,—to sell it to raise funds for the necessary purposes of the voyage. These are cases of admiralty and maritime jurisdiction.”

§ 297. Demurrage is an allowance for damage by the detention of a vessel. From the nature of maritime commerce and navigation, all practicable promptness and certainty are of the utmost importance. The benefits of a careful study of markets, and of a wise forecast, may all be lost to the shrewdest merchant, by negligent or wilful delays on the part of the ship. The master is always bound to proceed with dispatch. It is a necessary element of his undertaking to transport. In like manner, the merchant is bound to give the ship all reasonable dispatch. Ships are made to plough the seas, and all who are connected with her may improperly delay or impede her progress. The master may neglect to perform his appropriate functions. The crew may be improperly absent, or they may refuse to perform their duty. The merchant may neglect to put his goods on board at the beginning, or to take them out at the end of the voyage. The ship may be delayed to make repairs in cases of collision, or by arrest or seizure, without sufficient cause. The actual damage caused by the hindrance or delaying of a vessel is compensated by demurrage. It is often a matter of express contract, but is not necessarily so. In the Black Book of the Admiralty are found cases of demurrage. Cases of demurrage are admiralty and maritime cases.”

bond or otherwise, to pay an average contribution, was personally liable to pay it. This was not in any view a question of jurisdiction. It was not in abatement, but in denial of the legal liability.

This was the question which the court actually decided. Briefly stated, the court decided that there is no such maritime lien in cases of average as would make the party liable, simply by receiving the property saved, or its proceeds; and that the owner of the goods himself is not, by the maritime law, personally liable for a contribution, if his property be delivered to him free from the right of the master to detain it till its share of the contribution be paid.

¹³ *Ante*, § 106; Laws of Oleron, art. 8; Cleirac, 80.

¹⁴ *Brown v. The Neptune*, Gilp. 90; *Snell v. The Independence*, id. 145; *The Apollon*, 9 Wheat. 362; *The Lively*, 1 Gal. 318; *The Duchess of Kent*, 1 W. Rob.

§ 298. Vessels engaged in the fisheries, in wrecking, in privateering, or other maritime employment, in which association increases efficiency or security, often agree to make common cause in their enterprise. Such arrangements are agreements of *consortship*. They are maritime contracts, and are within the acknowledged jurisdiction of the admiralty of this country."

§ 299. The admiralty has also jurisdiction of the *survey and sale* of vessels. In cases of distress or serious injury, in which a master, in a port away from his owners, finds it impracticable to repair, refit, or proceed on his voyage, the sale of the vessel and cargo seems to be his only resort, and nothing can be more fit and proper than that the maritime courts, administering the law of the sea, and in some sort the law of nations, should be held competent to examine into the circumstances, and order a sale. The master himself cannot fail to find in such a jurisdiction a most reliable auxiliary, and to the owner and underwriter it must be a protection against fraud, improvidence, and indiscretion. Under the influence of English common law decisions, there has been some disposition to deny the admiralty jurisdiction, but it may now be considered as established."

§ 300. Cases of salvage are cases of admiralty and maritime jurisdiction. Salvage is the compensation due to persons by whose voluntary assistance a ship or its lading has been saved to the owner from impending peril, or recovered after actual loss." The right to salvage depends solely upon the consideration, that property has been saved to the owner, from maritime peril, by the salvor. His intrepidity, humanity, relief to distress, or preservation

296; *The Zee Star*, 4 id. 71, *The Madonna Del Burso*, id. 169; *The Peacock*, id. 185; *The Anna Catherina*, id. 12; *The John*, 2 Hag. Ad. R. 817; *The Fortitudo*, 2 Dod. 58; *Prynne* Ad. 116; *Rhod. Law*, art. 101.

⁷⁵ *Andrews v. Wall*, 3 How. 568; *ante*, § 106; *Wall v. Andrews*, 2 N. Y. Leg. Obs. 157; *The Fortitudo*, 2 Dod. 72.

⁷⁶ *The Eliza Cornish*, 26 Eng. Law and Eq. 592, *Dunlap's Ad. Prac.* 48, 49; *Abbott on Shipping*, 23; *The Fanny and Elmira*, *Edward's Ad. Rep.* 118; *The Warrior*, 2 Dod. 288-295; *Janney v. The Columbian Ins. Co.* 10 Wheat. 412; *The Tilton*, 5 Mason, 465; *Dorr v. The Pacific Ins. Co.* 7 Wheat. 581; *Post v. Jones*, 19 How. 150; *The Henry*, *Blatchf. & H.* 465.

⁷⁷ *Abbott on Ship.* 554; *Hand v. The Elvira*, *Gilp.* 60, 66.

of life do not affect his right to compensation; they only affect its amount."

§ 300 *a*. Salvage does not depend upon the character of the parties rendering the service, nor upon the character of the assistance rendered, nor upon the kind of peril or cause of loss, nor upon the national character or ownership of the property saved or of the owners.

There is no limitation to the kind of persons who may be entitled to this compensation. They may be persons in the employ of the nation; as officers and seamen of vessels of war;" the Royal Coast-Guard and revenue officers;" or semi-official persons, as pilots," Lloyd's agent;" or persons having some relation to the subject saved, as passengers," the crew, in extraordinary circumstances," consorts;" or persons of no independent right, as women," apprentices," boys," slaves," masters, mates, sailors, cooks, surgeons, carpenters, passengers, and landsmen of every national character.

§ 300 *b*. Neither does salvage depend upon the character of the assistance rendered, nor upon the kind of peril or the cause of loss.

¹⁸ *The Emblem*, Daveis, 61, 64; *The India*, 1 W. Rob. 406, 408.

¹⁹ *The Thetis*, 3 Hag. 14; *The Porcher*, 2 id. 270, note; *The Gage*, 6 C. Rob. 273; *The Lord Nelson*, Edw. R. 79; *The Pensamento Felix*, id. 115; *The Mary Ann*, 1 Hag. 158; *Prich. Dig.* 385; *The Lustre*, 3 Hag. 154; *The Ewell Grove*, id. 209; *The Helena*, id. 430; *The Wilsons*, 1 W. Rob. 172; *The Iodine*, *Prich. Dig.* 385, note; *The U. S. v. The Amistad*, 15 Pet. 518.

²⁰ *The Helena*, 3 Hag. 430, note; *Le Tigre*, 3 Wash. C. C. R. 567, 572; *Prich. Dig.* 393, § 323, and note.

²¹ *The Balsemao*, 2 Hag. 270, note; *The Nicolaas Witzen*, 3 id. 369; *Hobart v. Drogan*, 10 Pet. 108.

²² *The Traveller*, 3 Hag. 370.

²³ *Prich. Dig.* 360, § 88; *Newman v. Walters*, 3 Bos. & Pull. 612; *Abbott on Ship.* 560.

²⁴ *The Neptune*, 1 Hag. 227, 237; *Prich. Dig.* 385, note 55.

²⁵ *The Waterloo*, 2 Dod. 433, 443; *The Ganges*, *Prich. Dig.* 389, note 62.

²⁶ *The Jane & Matilda*, 1 Hag. 187, 194.

²⁷ *Bell v. The Ann*, 2 Pet. Ad. Dec. 278, 282; *Mason v. The Blaireau*, 2 Cranch, 240, 270; *The Two Friends*, 8 Jur. 1011; *The Columbine*, 2 W. Rob. 186; *Prich. Dig. Salvage*, (Civil) §§ 308, 314, 320, 335, 337.

²⁸ *Prich. Dig. Salvage*, (Civil) §§ 327, 330.

²⁹ *Small v. Goods*, 2 Pet. Ad. Dec. 284, 287; *Mason v. The Blaireau*, 2 Cranch, 240, 241.

It need only be the saving of a vessel or cargo in danger, supplying stores, loaning an anchor, going for assistance, towing, helping to navigate in a storm, piloting into a port, fishing up from the bottom, quelling a mutiny, taking from pirates, recapturing from an enemy. Neither does it require a request. It must be voluntary; that is to say, it must not spring from any particular duty, or from any particular relation to the saved property, or from any specific contract. It must be a service which the party may lawfully decline to render. Nor does it depend upon the national character of the property saved or of the owners.

§ 300 *c*. Salvage service is highly favored in law, in all commercial countries, from motives of clear public policy and a regard to the interests of commerce."

The stimulus which public policy and the interests of commerce supply is simply the spur of private interest."

§ 300 *d*. Compensation for salvage service is an absolute legal right. This right is personal to the salvor, notwithstanding his relation to others." It being thus a personal right, a party cannot be deprived of it except by law.

§ 300 *e*. The right to salvage depends upon the saving of the property; but the rate or amount of salvage depends upon the amount of the property, the probability of loss, the amount of peril to the property, the value of the service to the owner of the property, and the personal toil, loss of time, daring and danger of the salvors. The highest order of merit, in a pecuniary estimate, is the safe bringing in of property entirely abandoned and lost to the owner,—derelict. For such a service, courts have sometimes awarded seven-eighths for salvage, and it is usual to give one-half."

⁹⁰ *Mason v. The Blaireau*, 2 Cranch, 240, 266; *The Joseph Harvey*, 1 C. Rob. 318, note; *The William Beckford*, 3 id. 355; *Hand v. The Elvira*, Gilp. 60, 69; *The Louisa*, 1 Dod. 317, 318, 319; *The Emblem*, Daveis, 61, 64, 65, 66; *The Centurion*, Ware, 477; *The Boston*, 1 Sum. 328.

⁹¹ *Adams v. The Sophia*, Gilp. 77, 79, 80; *The Emblem*, Daveis, 61, 64.

⁹² *Le Tigre*, 3 Wash. C. C. R. 567, 572, 573.

⁹³ *Vide The Josephine*, 2 Blatchf. C. C. R. 323.

Salvage cases are within the admiralty jurisdiction, both in England and this country."

§ 301. For the protection of its commerce, for the collection of its revenues, and for the enforcement of all the regulations of its police in navigable waters, the United States, like all other commercial nations, finds it necessary to impose penalties and forfeitures on goods afloat and on vessels, in relation to which the laws of trade, navigation, and revenue, have been violated. In a great variety of such cases, the vessels and the goods are the only things within the reach of the courts and their process. Whenever, therefore, a penalty or forfeiture is attached to a ship or vessel, or goods on board of her, it is enforced by a seizure of the thing, and the proceeding to condemn it is a suit in the District Court, in the name of the United States, or other party, in whose favor the penalty or forfeiture is imposed.

An open, visible seizure, by an officer of the government, authorized by law to seize, must precede the commencement of judicial proceedings. The seizures are usually made by the revenue officers, or by the commanders of armed vessels on the high seas."

§ 302. All seizures under laws of impost, navigation, or trade of the United States, where the seizures are made on waters navigable from the sea by vessels of ten or more tons burden, are civil cases of admiralty and maritime jurisdiction, and the proceedings to enforce them must be had in the District Court."

* *Dunlap's Prac.* 57; *Abbott on Shipping*, 554; *Mason v. The Blaireau*, 2 Cranch, 240; *Peisch v. Ware*, 4 id. 347; *The American Ins. Co. v. Canter*, 1 Peters, 513; *The Amethyst*, *Davis R.* 20; *The Emblem*, id. 61; *Post v. Jones*, 19 How. 150; 8 Penn. Law Jour. 529, — a case of salvage in Wisconsin; *The Two Friends* — 1 C. Rob. 238; *Houseman v. The North Carolina*, 15 Pet. 40; *The U. S. v. Coombs*, 12 id. 72; *The Wave*, *Blatchf. & H.* 235; *The John Gilpin*, *Olc.* 77; *Williams v. The Jenny Lind*, *Newb.* 443.

* *Waring v. Clarke*, 5 How. 464; *Collection Act of 1799*, § 70; *Collection Act of 1793*, § 27; *Gelston v. Hoyt*, 3 Wheat. 246; *The Ann*, 9 Cranch, 289; *Slave Trade Act*, May 10, 1800, March 2, 1807; *Piracy Act*, March 3, 1819; *Bett's Prac.* 68; *The Commerce*, 1 Black. 574.

* *Glass v. The Betsey*, 3 Dallas, 6; *Yeaton v. The U. S.* 5 Cranch, 281; *Steele v.*

§ 303. It is the place of seizure, and not the place of committing the offence, which decides the jurisdiction." If the seizure be made in a foreign jurisdiction, or on the high seas, the District Court of the district to which the property is brought has the jurisdiction." If the seizure be made within a judicial district of the United States, the District Court of that district has the jurisdiction. If the seizure be unlawful, the party has his redress by a suit *in personam* in the admiralty. The jurisdiction in this class of torts is co-extensive with the jurisdiction of the seizure, and exists whether the seizure be on the high seas, in ports and harbors, or on the lakes and rivers of the interior.

Where there has been a condemnation in a revenue case of forfeiture, an informer entitled to a share of the proceeds, may institute an original suit in the admiralty to recover them."

§ 303 *a*. But the collection of duties is not a cause of admiralty and maritime jurisdiction, and a suit *in rem* to enforce the payments of duties cannot be maintained."

§ 304. *Ransom Bills* are exclusively of admiralty cognizance. They necessarily involve the question of prize, or no prize, of the legality of the capture, and of the regularity of the commission

Thatcher, Ware, 97; Jud. Act, § 9; Whelan *v.* The U. S. 7 Cranch, 112; Rose *v.* Himely, 4 id. 241, 276; The U. S. *v.* The Betsey & Charlotte, 4 id. 443; The Samuel, 1 Wheat. 9; Gelston *v.* Hoyt, 3 Wheat. 246; The Merino, &c. 9 Wheat. 391; The U. S. *v.* La Vengeance, 3 Dal. 297; The Sarah, 8 Wheat. 391; The Palmyra, 12 id. 1; The Marianna Flora, 11 id. 1.

⁹⁶ Keene *v.* The U. S. 5 Cranch, 304; The Ann, 9 Cranch, 289; The Sarah, 8 Wheat. 391; The U. S. *v.* The Betsey & Charlotte, 4 Cranch, 443; Whelan *v.* The U. S. 7 id. 112; The Merino, &c. 9 Wheat. 391.

⁹⁷ The Abby, 1 Mason, 361; The Merino et al. 9 Wheat. 391; The Margaret, id. 421.

⁹⁸ Dunlap Prac. 38, 41; Burke *v.* Trevitt, 1 Mason, 96; Delcol *v.* Arnold, 3 Dallas, 333; Colson *v.* Thompson, 2 Wheat. 336; The Eleanor, id. 345; The Amiable Nancy, 3 id. 546; Conk. Treat. 2d ed. 136, 139, 350, 351; Whelan *v.* The U. S. 7 Cranch, 112; Glass *v.* The Betsey, 3 Dallas, 6; The U. S. *v.* La Vengeance, id. 297; The U. S. *v.* The Betsey & Charlotte, 4 Cranch, 443; Yeaton *v.* The U. S. 5 id. 281; The Active *v.* The U. S. 7 id. 100; Westoot *v.* Bradford, 4 Wash. 492.

⁹⁹ Three hundred and fifty chests of Tea, 12 Wheat. 486; The Waterloo, Blatchf. & H. 114.

and conduct of the captors; which questions are of admiralty cognizance alone.¹⁰⁰

§ 305. *Proceeds.*—Whenever there is a maritime lien, it is in the nature of a proprietary interest, and it adheres to the proceeds of the thing, into whose hands soever they may go. The ownership and possession of the proceeds render the party himself liable personally for the demand, and he may be proceeded against *in personam*. The existence of this principle has led to the mistaken notion, that there is no jurisdiction *in personam*, except as ancillary to, or springing out of, a lien. But no principle is better settled, than that personal liability in a maritime cause of action has no connection with or relation to lien. This lien upon proceeds extends often to the proceeds of a judicial sale in the registry of the court, it being a general rule, that before the proceeds are distributed, the court, on proper proceedings for that purpose, will adjudicate upon the claims to such proceeds, arising from liens upon them.¹⁰¹

§ 306. Cases of prize have always been held to be within the admiralty and maritime jurisdiction of the United States, and in all forms, *in rem* and *in personam*, for condemnation, for military salvage, for restitution, and for damages, have been, from the earliest periods, entertained by the courts sitting as Courts of Admiralty; and, by the act of Congress of June 26, 1812, § 6, they are expressly made civil causes of admiralty and maritime jurisdiction.¹⁰²

§ 307. In Scotland, and among the continental nations of

¹⁰⁰ The Lord Wellington, 2 Gall. 103; *Maisonnaire v. Keating*, id. 341, 343; *Girard v. Ware*, 1 Pet. C. C. 142; *ante*, § 106.

¹⁰¹ *Sheppard v. Taylor*, 5 Pet. 675; *Brackett v. The Hercules*, Gilp. 185; *Ex-Parte Lewis*, 2 Gal. 483; *McLane v. The U. S.* 6 Pet. 404; *Mutual Safety Ins. Co. v. Cargo of the George*, Olc. 89; *post*, §§ 561, 562.

¹⁰² *Glass v. The Betsey*, 3 Dal. 6; *Penhallow v. Doane's Administrators*, id. 54; Act of June 26, 1812, § 6; *Conk. Treat.* 2d ed. 135; *Bingham v. Cabbot*, 3 Dal. 19; *Brown v. The U. S.* 8 Cranch, 187; *Martin v. Hunter's Lessee*, 1 Wheat. 335; *Jennings v. Carson*, 1 Pet. Ad. Dec. 1; *Fales v. Mayberry*, 1 Gal. 563; *The Alerta*, 9 Cranch, 359; *The Adeline*, id. 244; *La Amistad De Rues*, 5 Wheat. 335; *Keen v. The Gloucester*, 2 Dal. 36.

Europe, the admiralty, by virtue of its general powers, exercises the same jurisdiction, but in England the High Court of Admiralty has no such jurisdiction by virtue of its general power; but the Prize Court is always constituted by virtue of a special commission.¹⁰³

§ 308. The Court of Admiralty has jurisdiction over the whole subject matter of damage on the high seas.

Cases of torts on the high seas, *super altum mare*, have always been held, even in England, to be within the jurisdiction of the admiralty. And the jurisdiction in such cases has usually been held to depend upon locality, embracing only civil torts and injuries done on the sea, or on waters of the sea, where the tide ebbs and flows. It depends upon the place where the cause of action arises, and that place must be the waters which are subject to the admiralty jurisdiction.¹⁰⁴ It may, however, be doubted whether the civil jurisdiction, in cases of torts, does not depend upon the relation of the parties to a ship or vessel, embracing only those tortious violations of maritime right and duty which occur in vessels, to which the admiralty jurisdiction, in cases of contracts, applies. If one of several landmen bathing in the sea, should assault, or imprison, or rob another, it has not been held here, that the admiralty would have jurisdiction of the action for the tort.¹⁰⁵

§ 309. Cases of assault and battery, imprisonment, or other personal injury, or ill usage, arising between the master or officers on the one hand, and seamen or passengers on the other, are clearly within the admiralty and maritime jurisdiction. The admiralty entertains jurisdiction of personal torts committed by the master on a

¹⁰³ Sharswood's Bl. Com. 69, 108; *Le Caux v. Eden*, Doug. 613.

¹⁰⁴ *The Commerce*, 1 Black. 574.

¹⁰⁵ *The Volant*, 1 W. Rob. 387; 3 Story on Const. 527, 530; *Martin v. Hunter's Lessee*, 1 Wheat. 335; *Dunlap's Ad. Prac.* 43, 49; *The Amiable Nancy*, 1 Paine, 117; *Steele v. Thacher*, Ware, 91, 94; *The General Steam Nav. Co. v. Tonkin*, 4 Moore, 322; *The Potsdam*, 4 C. Rob. 73; *Krauskopp v. Ames*, 7 Penn. Law Jour. 77; *The American Ins. Co. v. Johnson*, Blatchf. & H. 10; *The Martha Anne*, Olc. 18; *The Yankee v. Gallagher*, McAll. 467; *Phila. Wil. & Co. R. R. Co. v. Phila. & Havre de Grace Steam Tug-boat Co.* 23 How. 209; *Smith v. Wilson*, 31 How. Pr. 272.

passenger, whether by direct force, as trespasses, or by consequential injuries. The contract of passengers with the master is not for mere ship-room and personal existence on board, but for reasonable food, comforts, necessities, and kindness. In respect to females, it proceeds yet further, and includes an implied stipulation against obscenity, immorality, and a wanton disregard of the feelings. A course of conduct oppressive and malicious in these particulars, will be punished by the court, as well as personal assaults. By the 16th rule of the Supreme Court, it is provided, that in all suits for assault and battery, or beating, the suit must be *in personam* only.¹⁰⁰

This is undoubtedly true, where the action is technically for the assault and battery, as a mere tort; but it would seem, on principle, that if the action be brought on the contract, as for not carrying a passenger safely and without injury, or for not treating with proper kindness a passenger or seaman, an assault or beating being the gravamen of the breach, the suit may be *in rem* against the vessel.

But causes of action for mere personal torts are not regarded in admiralty as surviving the death of the person injured; and a state statute will not enable an administrator to maintain an action for such tort, committed on the high seas.¹⁰⁷ Nor will the admiralty entertain suits for merely nominal damages in cases of personal torts.¹⁰⁸

§ 310. Cases of spoliation and damage, are cases of admiralty and maritime jurisdiction. These include illegal seizures, or depredations of vessels or goods afloat, embracing the civil injury called piracy, which consists in an unwarrantable violation of property, committed on the high seas. The injured party may proceed against the property, or the proceeds of the property, to recover it or against the person of the wrong doer for the damage.¹⁰⁹

¹⁰⁰ Rule 16; *Chamberlain v. Chandler*, 3 Mason, 243; *Marshall v. Basin*, 7 N. Y. Leg. Obs. 343; *Vide Peterson v. Watson, Blatchf. & H.* 487; *Thomas v. Gray*, id. 493.

¹⁰¹ *Crapo v. Allen*, Sprague, 184.

¹⁰² *Barnett v. Luther*, 1 Curt. C.C. 434.

¹⁰³ *The Hercules*, 2 Dod. 369, 375; 2 Chit. Gen. Prac. 517; *Radly & Delbow v. Eglesfield & Whital*, 1 Vent. 173; *Radly v. Whitwell & Ecclesfield*, 2 Keb. 828;

§ 311. Every violent dispossession of property on the ocean, is *prima facie*, a maritime tort, and as such, it belongs to the admiralty jurisdiction.¹¹⁰ Petitory, as well as possessory suits, are cases of admiralty and maritime jurisdiction. They may be brought in all cases to reinstate the owners of ships, who have been wrongfully deprived of their property. This includes cases of restitution of captured property,—of vessels irregularly or illegally condemned, and sold by the master without legal authority, or in an illegal or irregular manner.¹¹¹

§ 312. Cases of collision of vessels are cases of admiralty and maritime jurisdiction.

There have been attempts to exclude from the jurisdiction, in these cases, all collisions happening within a county, a port, or a harbor. But the jurisdiction may now be considered as fully settled in all cases on navigable waters, as well on the lakes and rivers, and within ports, harbors, and counties, as on the open sea.¹¹² And the suit *in rem* may be brought in any district where the offending thing may be found, and *in personam* where the defendant resides.¹¹³

§ 313. The jurisdiction of the District Courts, in civil causes of admiralty and maritime jurisdiction, is exclusive of all others. No state court can entertain such cases; nor can a state legislature confer jurisdiction upon a state court to enforce such a lien by a

4 Inst. 152; 1 Rob. 530, c. 5; 1 Com. Dig. 272; *The Helen*, 1 Hag. Ad. R. 142; *The Panda*, 1 W. Rob. 433; *Davison v. Seal-skins*, 2 Paine, 324; *The Commerce*, 1 Black. 574.

¹¹⁰ *L'Invincible*, 1 Wheat. 258.

¹¹¹ *L'Invincible*, 1 Wheat. 238; *Manro v. Almeida*, 10 id. 473; *The Tilton*, 5 Mason, 465; *The Dove*, 1 Gal. 585; *Taylor v. The Royal Saxon*, 1 Wall. Jr. C. C. 311; *Ward v. Peck*, 18 How. 467; *The Friendship*, 2 Curt. C. C. 440; *The J. B. Lunt*, 11 N. Y. Leg. Obs. 187; *The Commerce*, 1 Black. 574; *contra*, *The John Jay*, 3 Blatchf. 67.

¹¹² Ad. Rule 15; *The Woodrop Sims*, 2 Dod. 83; *The Dundee*, 1 Hag. Ad. R. 109; *Reeves v. The Constitution*, Gilp. 579; *Strout v. Foster*, 1 How. 89; *The Celt*, 3 Hag. Ad. R. 321; *Waring v. Clarke*, 5 How. 441; *The Leopard*, *Daveis' R.* 193; *The Scioto*, id. 360; *The Lotty*, Olc. 329; *Jackson v. The Magnolia*, 20 How. 296; *Nelson v. Leland*, 22 id. 48; *The Commerce*, 1 Black. 574; *Town v. The Western Metropolis*, 28 How. Pr. 283.

¹¹³ *The Commerce*, 1 Black. 574; *Nelson v. Leland*, 22 How. 48.

suit or proceeding *in rem*, which is the distinguishing feature of a suit in admiralty."¹⁴ It is familiar law that Congress cannot confer judicial power or jurisdiction upon a state court. This makes it exceedingly important that the proper jurisdiction of the national courts be not denied, lest the citizen be entirely deprived of his right, as he is now in the case of supplies to domestic vessels, by the alteration of the Twelfth Admiralty Rule, changing it from a rule of mere practice to a most important and sweeping rule of law, destroying at the same time a security and a remedy,—a change made on, we know not what examination, but certainly without open argument. Nor does it appear by what authority the court could make such a change in the law, their power under the statute being limited to regulating proceedings. By it a most useful and deserving class of contributors to the efficiency of the ships that carry on our commerce are entirely denied a resort to either a national or a state tribunal for the enforcement of their usual remedies. Their contract "has always been held to be a maritime contract,"¹⁵ and it has always been held that when the court has jurisdiction of the contract, it has jurisdiction of all its incidents, and may enforce all its remedies. If, then, such a maritime contract be, no matter by what law or contract, a lien upon the vessel, the creature and the ward of the admiralty, it is not apparent how jurisdiction to enforce that lien can properly be denied. The court has always held that it cannot, consistently with its duty, refuse to exercise a power with which the constitution and law have clothed it, when its aid is invoked by a party entitled to demand it. It is as great a violation of duty to refuse to exercise jurisdiction which is granted, as to exercise that which is not granted.

§ 313 *a*. The extent of the political grant of judicial jurisdiction in maritime cases, to the general government, as a national sovereignty, has been thus treated at greater length than it would have been, but for the conviction that the subject is one deserving

¹⁴ *The Moses Taylor*, 4 Wall. 411; *The Belfast*, 7 id. 624; *The Josephine*, 39 N. Y. Rep. 19.

¹⁵ *The General Smith*, 4 Wheat. 438.

all the importance which the founders of the republic gave to it. The course of decisions has been such that many paragraphs which have been retained in this edition, might, perhaps, have been omitted as obsolete ; but while the settled range of admiralty jurisdiction has been greatly extended, some important questions may be considered as still open to discussion, and it was therefore deemed better to allow the whole to stand. To arrive at the present state of progress, the court has not hesitated to correct the errors into which it has been sometimes led, by disposing of cases with less discussion and consideration than they would have received, had the importance which subsequent events developed, been perceived when the cases were heard ; and this, although the overruled cases have been accepted as the law for long periods of years.¹¹⁶ The discussions and events of the last few years have greatly modified current opinions and theories, legislative, as well as judicial, and have changed that drift of opinion towards the exaltation of the authority of the states, and the corresponding undervaluing of the national powers, which was too often perceptible in the opinions of individual judges, and sometimes in the adjudication of the court, in the matter of admiralty jurisdiction, and have established juster theories of the national power.

§ 313 *b*. The rule *stare decisis*, when properly applied, is a sound one. When the decisions are, in fact, a *series rerum perpetuo et similiter judicatarum*, they furnish very high evidence of the law. They are, however, evidence which may be rebutted, and when successfully rebutted, their evidence cannot prevail. No number of erroneous decisions can furnish sufficient reason for deciding contrary to law. When a decision has been followed without hesitation or consideration, by many others, it is but one decision, of which the others are but echoes. The question always remains, what is the law, and decisions are to be weighed, not counted. In the decision of a particular case, the judges are to be counted, but as evidence of the law, they are to be weighed. There may be a dissent by one judge, which may be of more weight than the

¹¹⁶ The *Genesee Chief*, 12 How. 455-6 ; The *Belfast*, 7 Wall. 639 ; The *Eagle*, 8 id. 15.

opinions of all the majority. There may be decisions on cognate or analogous questions. There may be inconsistent, or conflicting decisions, which invite to re-argument and re-examination. These, and other considerations, have made the list of overruled cases a long and important one in all the great departments of law, equity, and admiralty. While these sheets have been going through the press, the case of *The Eagle*, which will be given to the profession in 8 Wallace, page 15, has declared the admiralty jurisdiction, so far as the waters are concerned, to extend to all navigable waters; and this irrespective of the special clause in the ninth section of the Judiciary Act of 1789, and of the Act of 1845. Cases arising on navigable waters, harbors, bays, rivers, lakes, as well as seas and oceans, are cases of admiralty and maritime jurisdiction, independently of any statutory provision. They are properly embraced in the constitutional grant of all cases of admiralty and maritime jurisdiction. The legislative limitations and grants referred to and recognized in the cases of *The Genesee Chief*, 12 Howard; *The Magnolia*, 20 Howard; *Hine v. Trevor*, 4 Wallace; *Allen v. Newberry*, and *Maguire v. Card*, 21 Howard, and *The Belfast*, 7 Wallace, are declared to be inoperative. In the first edition of this work, twenty years ago, the opinion was ventured that, for practical purposes, in relation to the admiralty and maritime law, we are limited, not by any strict and technical limit, but by the purpose and the use—the subject matter—for the purposes of commerce; and that navigability, so far as water is concerned, is on principle, the only test of admiralty and maritime jurisdiction. It is now so settled by the highest judicial authority. It may now be permitted to express the confident hope that in a much shorter period of time the same high authority, on further consideration, will reach the inevitable conclusion, that the navigability of a ship, that navigates the water, subjects its commercial relations to the admiralty jurisdiction; that the navigability of the water subjects it to the admiralty jurisdiction, only because it floats a ship; and that the owners, builders, repairers, charterers, freighters, insurers, mortgagees, salvors, and creditors of ships and vessels are, in those characters, all subject to that jurisdiction, and entitled to the benefits of the maritime law, and subject to the duties imposed by its characteristic, equitable de-

cisions, without any regard to the place where built, or owned, or found. Not till then will our country come up to that full standard of nationality and uniformity in this respect, which becomes every day more and more desirable.

If all the judicial power vested in the United States had, in all its details, been provided for in a judicial system, composed of subordinate judicial officers and courts, as well as of higher tribunals, fully adequate to all the wants of the people,—in small matters as well as great,—within the range of that grant of power, it would have been felt in the strength, and harmony, and peace, and affection which would have resulted from the increased security of the rights of the citizens of the different states. The national judiciary would thus have been visible everywhere, accessible everywhere, and everywhere the shield and the protection of the citizen and the stranger, against local prejudices, and sectional sympathies. The mere moral effect of that judicial system is of incalculable benefit to the nation, and it is the duty of all the courts to sustain it in its legal and proper extent,¹¹⁷ — in the language of Chief Justice Marshall, in the case of *Gibbons v. Ogden*, “with that independence which the people of the United States expect from this department of the government.”

¹¹⁷ Ante, §§ 27, 28.

CHAPTER XVIII.

ADMIRALTY PRACTICE.—THE ORGANIZATION OF THE COURTS.

§ 314. THE law of national jurisdiction or sovereignty in admiralty and maritime cases being ascertained, the next subject of inquiry is the mode of administering justice in such cases, under that jurisdiction.

Practice is the means by which justice is administered. And as the first step in providing for the administration of justice is the creation of courts of justice, so the last step is the exercise of the powers of the court in executing its judgments. Thus the whole of what is usually denominated admiralty practice, is the organization and jurisdiction of the admiralty courts, their forms, modes, and rules of procedure, and the duties and responsibilities of their various functionaries.

ADMIRALTY COURTS.

§ 315. There are no courts of the United States which are merely admiralty courts. The only courts, except the courts in the territories, are—the District Courts, the Circuit Courts, the Supreme Court. And each of them has admiralty jurisdiction in certain cases, and also common law—both civil and criminal—and equity jurisdiction.

§ 315 *a*. The territorial courts are not constitutional courts, in which the judicial power conferred on the general government can be deposited. They are legislative courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of the clause which enables Congress to make all needful rules and regulations respecting the territory belonging to the United States. They have, therefore, no admiralty jurisdiction; but such

jurisdiction may be vested in courts created by the territorial legislatures.¹

THE DISTRICT COURT.

§ 316. The United States, exclusive of the territories, was originally divided into as many districts as there were states. The great increase in population and business of some of the states, has made it necessary to divide them into two or more districts. In each of these districts is a court called a *District Court*, held by a single judge, who is called the district judge, and in him all the judicial powers of that court are vested.

It is to the admiralty jurisdiction of the District Court that the previous pages of this work have been devoted.

§ 317. The District Courts have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction. In the statute the clause is added—"including all seizures under laws of impost, navigation or trade, of the United States, where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts, as well as upon the high seas."² This clause, however, has no effect to extend or limit the jurisdiction. The jurisdiction extends to all navigable waters.³

§ 318. The judge of the District Court must reside within the district for which he is appointed, and is required to hold stated terms, at such times and places as are established by law. The stated terms in the Southern District of New York are held on the first Tuesday of every month. The district judge is also authorized to hold special courts at his discretion, at such place in his district as the nature of the business and the discretion of the judge shall

¹ *The American Ins. Co. v. Canter*, 1 Pet. 511; *vide* *The American Ins. Co. v. Johnson*, Blatchf. & H. 13; *Chouteau v. Rice*, 1 Minn. Rep. 192.

² *Jud. Act of 1789*, § 9; *Conk. Treat.* 2d edit. 83, 129; *Glass v. The Betsey*, 3 Dal. 6; *Penhallow v. Doane's Administrators*, id. 54; *Jennings v. Carson*, 1 Pet. Ad. R. 1, 2; *The U. S. v. The Betsey & Charlotte*, 4 Cranch, 443; *Whelan v. The U. S.* 7 id. 112; *The Samuel*, 1 Wheat. 9; *The Sarah*, 8 id. 391.

³ *The Eagle*, 8 Wall. 15.

direct. The character of maritime causes, and the necessities and occupations of many of the persons engaged in maritime transactions, and whose presence as parties or witnesses is often necessary to the administration of justice, renders delay, in many cases, equivalent to a denial of justice. It is with a view to speedy justice, that this power to hold special courts has been conferred; and in the maritime portions of the country, it is the uniform practice to hold special courts frequently for the trial of causes. In the Southern District of New York, special terms are held on every Tuesday, when the stated term is not in session.⁴ And as the court is always open, and, wherever the judge is, there is a court, it is the practice to enter all orders in causes, in the vacation of the usual terms, as of a special term held on the day of entering the order.

§ 319. In case of the inability of the judge of any District Court to attend on the day appointed for holding a District Court, such court may, by virtue of a written order from the judge thereof, directed to the marshal of the district, be adjourned by the marshal to the next stated term of said court, or to such day prior thereto as in the said order shall be appointed. And in case of the death of the said judge, all process, pleadings and proceedings are continued of course, until the next stated session after the appointment and acceptance of the office by his successor.⁵

In case of the disability of the district judge to perform the duties of his office, the cases before him are transferred to the Circuit Court, as is more fully stated in section 321.

THE CIRCUIT COURT.

§ 320. A prescribed number of districts, varying with the growth of the country, constitute a circuit, and in every district of said circuit is held a Circuit Court, composed of three judges, — the justice of the Supreme Court assigned to the circuit for the time being, the circuit judge of the circuit, and the district judge

⁴ Jud. Act of 1789, § 8; Dunlap's Prac. 108.

⁵ Act of March 26, 1804, § 1; Jud. Act of 1789, § 6; *Ex Parte The U. S. 1 Gal.* 338; Act of Aug. 23, 1842, § 5.

of the district. Either one or more of the judges may hold the Circuit Court in all cases. In appeals from the District Court, the district judge cannot vote in cases reviewing his own decisions, but may assign his reasons.*

The Circuit Courts have no original civil admiralty jurisdiction. In that class of cases, their jurisdiction is confined to appeals from the District Courts in their respective districts. In many of the districts, the District Court is clothed with the powers of a Circuit Court, in which cases it is to be considered as a Circuit Court, in the exercise of those powers.†

From final decrees in a District Court, in causes of admiralty and maritime jurisdiction, where the matter in dispute, exclusive of costs, exceeds the sum or value of fifty dollars, an appeal is allowed to the Circuit Court next to be holden in the district where the decree was rendered.‡ To hear and decide these appeals is the whole admiralty jurisdiction of the Circuit Court.

§ 321. In case of the disability of the district judge to perform his duties, the business may be transferred to the Circuit Court, by virtue of the "Act further to amend the judicial system of the United States," passed March 2, 1809, which provides:—

SEC. 1. That in case of the disability of the district judge of either of the districts of the United States to hold a District Court, and to perform the duties of his office, and satisfactory evidence thereof being shown to the justice of the Supreme Court, allotted to that circuit in which such District Court ought by law to be holden; and on application of the district attorney or marshal of such district, in writing, to the said justice of the Supreme Court, said justice of the Supreme Court shall thereupon issue his order in the nature of a certiorari, directed to the clerk of such District Court, requiring him forthwith to certify into the next Circuit Court to be holden in said district, all actions, suits, causes, pleas or processes, civil or criminal, of what nature or kind soever, that may be depending

* Act of Sept. 24, 1789, § 4; 1 Stat. at Large, 74; *Pollard v. Dwight*, 4 Cranch, 421; *Bingham v. Cabbot*, 3 Dal. 36; *The U. S. v. Lancaster*, 5 Wheat. 434.

† *Matter of Kaine*, 10 N. Y. Leg. Obs. 257.

‡ Conk. Treat. 2d. edit. 96; Act of March 3, 1803, § 2; *Janson v. The Vrow Christina Magdalena*, Bee, 171; *The Hollen*, 1 Mason, 431.

in said District Court and undetermined, with all the proceedings thereon, and all files and papers relating thereto; which said order shall be immediately published in one or more newspapers, printed in said district, and at least thirty days before the session of such Circuit Court, and shall be deemed a sufficient notification to all concerned. And the said Circuit Court shall thereupon have the same cognizance of all such actions, suits, causes, pleas or processes, civil or criminal, of what nature or kind soever, and in the like manner as the District Court of said district by law might have, or the Circuit Court, had the same been originally commenced therein; and shall proceed to hear and determine the same accordingly; and the said justice of the Supreme Court, during the continuance of such disability, shall moreover be invested with and exercise, all and singular, the powers and authority vested by law in the judge of the District Court in said district. And all bonds and recognizances taken for or returnable to such District Court shall be construed and taken to be to the Circuit Court, to be holden thereafter, in pursuance of this act, and shall have the same force and effect in such Circuit Court as they could have had in the District Court to which they were taken: *Provided*, that nothing in this act contained shall be so construed as to require of the judge of the Supreme Court within whose circuit such district may lie, to hold any special court, or Court of Admiralty, at any other time than the legal time for holding the Circuit Court of the United States in and for such district.

SEC. 2. That the clerk of such District Court shall, during the continuance of the disability of the district judge, continue to certify, as aforesaid, all suits or actions, of what nature or kind soever, which may thereafter be brought to such District Court, and the same transmit to the Circuit Court next thereafter to be holden in the same district; and the said Circuit Court shall have cognizance of the same in like manner as is herein before provided in this act, and shall proceed to hear and determine the same: *Provided*, nevertheless, that when the disability of the district judge shall cease or be removed, all suits or actions then pending and undetermined in the Circuit Court, in which by law the District Courts have an exclusive original cognizance, shall be remanded, and the clerk of the said Circuit Court shall transmit the same, pursuant to the

order of said court, with all matters and things relating thereto, to the District Court next thereafter to be holden in said district, and the same proceedings shall be had therein in said District Court as would have been, had the same originated, or been continued in the said District Court.

SEC. 3. That in case of the district judge in any district being unable to discharge his duties, as aforesaid, the district clerk of such district shall be authorized and empowered, by leave or order of the circuit judge of the circuit in which such district is included, to take, during such disability of the district judge, all examinations and depositions of witnesses, and make all necessary rules and orders preparatory to the final hearing of all causes of admiralty and maritime jurisdiction.

§ 322. Under the 3d section of this act, the Hon. Judge Nelson, the justice of the Supreme Court, allotted to the second circuit, made the prescribed order in the following form :

“ It having been satisfactorily shown to me, that the Hon. Samuel R. Betts, District Judge of the Southern District of New York, is disabled, from ill health, to discharge the duties of his office, it is ordered that James W. Metcalf, Esq., Clerk of the said District Court, do take, during such disability of said district judge, examinations and depositions of witnesses, and make all necessary rules and orders preparatory to the final hearing of all causes of admiralty and maritime jurisdiction, according to the Act of Congress, March 2, 1809.

“ SAMUEL NELSON.

“ Washington, Jan. 28th, 1850.”

This order is entered at length in the minutes of the District Court, and in pursuance of it, the clerk, at the regular term of the court, calls the causes of admiralty and maritime jurisdiction, in their order on the docket or calender of causes, and performs all the functions of the judge in such causes, except to hear the arguments and decide the cause. He takes down the testimony

in writing, upon which, after hearing the parties, the judge decides.

§ 323. In all suits and actions in any District Court of the United States, in which it shall appear that the judge of such court is anyways concerned in interest, or has been of counsel for either party, or is so related to or connected with either party as to render it improper for him, in his opinion, to sit on the trial of such suit or action, it shall be the duty of such judge, on application of either party, to cause the fact to be entered on the records of the court; and, also, an order that an authenticated copy thereof, with all the proceedings in such suit or action, shall be forthwith certified to the next Circuit Court of the district; and if there be no Circuit Court in such district, to the next Circuit Court in the state; and if there be no Circuit Court in such state, to the most convenient Circuit Court in an adjoining state; which Circuit Court shall, upon such record being filed with the clerk thereof, take cognizance thereof in the like manner as if such suit or action had been originally commenced in that court, and shall proceed to hear and determine the same accordingly; and the jurisdiction of such Circuit Court shall extend to all such cases so removed as were cognizable in the District Court from which the same was removed.

SUPREME COURT.

§ 324. The Supreme Court of the United States consists of a chief justice and eight associate judges. It has exclusively all such jurisdiction of all civil suits in admiralty, against ambassadors or other public ministers, or their domestics, or domestic servants, as a court of law can have, consistently with the law of nations. And also of all civil suits in admiralty, when a state is a party, except between a state and its citizens, or citizens of other states, or aliens.

It has also original, but not exclusive, jurisdiction of civil suits in admiralty, between a state and citizens of other states, or aliens, —and suits brought by ambassadors, or other public ministers, or in which a consul, or vice-consul, is a party.

The Supreme Court has also power to issue writs of prohibition

to the District Courts, when proceeding as Courts of Admiralty and Maritime jurisdiction.*

The Supreme Court has also jurisdiction, on appeal, from the Circuit Courts, in all cases of final decrees in admiralty, when the matter in dispute, exclusive of costs, shall exceed the sum or value of two thousand dollars."

§ 325. The judges of all these courts are appointed by the President of the United States, by and with the advice and consent of the Senate, to hold during good behavior. Before they proceed to execute the duties of their respective offices, they must take the following oath or affirmation :

"I, A. B., do solemnly swear, (or affirm,) that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge and perform all the duties incumbent on me as judge, &c., according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States. So help me God."¹¹

§ 326. Their commissions are issued from the Department of State, and are simple appointments to the office, without any enumeration of duties, or grant of powers or privileges. Their commissions give the office, and it is to the laws of Congress alone that they are to look for their duties, their powers, and their privileges. The commission of the district judge is in the following form :

"ANDREW JOHNSON,

"President of the United States of America,

"To all who shall see these presents, greeting :

"Know ye, That, reposing special trust and confidence in the wisdom, uprightness, and learning of Samuel Blatchford, of New York, I have nominated, and by and with the advice and consent of the Senate, do appoint him to be Judge of the District Court

* The U. S. v. Peters, 3 Dal. 121.

¹⁰ Jud. Act of 1789, § 13.

¹¹ Const. Art. 2, § 2, Art. 3, § 1; Jud. Act of 1789, § 8.

of the United States, for the Southern District of New York, and do authorize and empower him to execute and fulfil the duties of that office, according to the constitution and laws of the said United States, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said Samuel Blatchford, during his good behavior.

“In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed. Given under my hand, at the City of Washington, the sixteenth day of July, in the year of our Lord one thousand eighth hundred and sixty-seven, and of the Independence of the United States of America the ninety-second.

“ANDREW JOHNSON.

“By the President,

“WILLIAM H. SEWARD, *Secretary of State.*”

The commission of the judge of the District Court is usually inserted at length in the minutes of the court, on the day of his taking his seat on the bench, preceded by an order, as follows:

“The Honorable Samuel Blatchford, having been appointed judge of this court, and having taken the oath required by law, took his seat upon the bench, and his commission was ordered to be entered at length in the minutes.”

The justice of the Supreme Court and the judge of the District Court have no independent commissions as judges of the Circuit Court. The circuit judge has a commission in the following form:

“ULYSSES S. GRANT,

“President of the United States of America,

“To all who shall see these presents, greeting.

“Know ye, That, reposing special trust and confidence in the wisdom, uprightness, and learning of Lewis B. Woodruff, of New York, I have nominated, and by and with the advice and consent of the Senate, do appoint him to be Circuit Judge of the Second Judicial Circuit of the United States, and do authorize and empower him to execute and fulfil the duties of that office, according to the constitution and laws of the said United States, and to have

and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said Lewis B. Woodruff, during his good behavior.

"In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed. Given under my hand, at the City of [L. s.] Washington, the twenty-second day of December, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America, the ninety-fourth.

"U. S. GRANT.

"By the President,

"HAMILTON FISH, *Secretary of State.*"

The circuit judge must reside in his circuit."¹²

§ 327. There is no separate commission of the judge nor constitution of the court in admiralty cases. When sitting to try an admiralty cause, the court is an admiralty court, and when sitting to try a criminal, it is a criminal court; and the court passes from the trial of an admiralty cause to a common law cause, and *vice versa*, and becomes alternately, at the same sitting, according to the nature of the cause on trial, an admiralty court, an equity court, and a common law court of civil or criminal jurisdiction, without any change of style, form, officers, or records, except that each case is conducted according to the established course of proceedings appropriate to its class. It is thus always the same court, whether acting in one class of causes or another. It is only as admiralty courts that they are here to be considered.

The judges are not allowed to exercise the profession or employment of counsel or attorney, nor to be engaged in the practice of the law."¹³

§ 328. All these courts have power to issue all writs which may be necessary for the exercise of their respective jurisdictions, and

¹² Act of April 10, 1869; 16 Stat. at Large, 44.

¹³ The *Jonquille*, 6 Wheat. 452; *Jennings v. Carson*, 4 Cranch, 24; Act of Dec. 18, 1812.

agreeable to the principles and usages of law. They have also power to adopt seals, to impose and administer all necessary oaths or affirmations, and to punish, by fine or imprisonment, at the discretion of the court, all contempts of authority in any cause or hearing before the court. Also, to make and establish all necessary rules for the orderly conduct of business in said courts, provided such rules are not repugnant to the laws of the United States.¹⁴

§ 329. In the exercise of its appropriate jurisdiction, the Court of Admiralty exercises equitable, as well as legal jurisdiction. If the subject be of a maritime nature, and so within the power of the court, and be of such a nature that the relief must be in the nature of equitable relief, the court is entirely competent to give the equitable, as well as the legal relief. It has the capacity of a court of law, and, in certain respects, the capacity of a court of equity. In its decisions upon the ultimate rights of parties, from considerations of conscience, justice and humanity, it sometimes mitigates the severity of contracts, and moderates exorbitant demands.¹⁵ The nature of maritime controversies, obviously, however, necessarily excludes from courts of admiralty, large classes of cases, such as specific performance, trusts, &c., which are of frequent occurrence in courts of equity.¹⁶ And the Court of Admiralty is not a court of general equity, nor has it the characteristic powers of a court of equity, but it is bound, by its nature and constitution, to determine the cases submitted to its cognizance, upon equitable principles, and according to the rules of natural

¹⁴ Jud. Act of 1789, § 14; *id.* § 17; Act of Sept. 29, 1789, § 1; *The U. S. v. Hudson*, 7 Cranch, 32.

¹⁵ *Edw. Ad. Jur.* 31, 138, 173; *post*, § 358; *The Orleans v. Phœbus*, 11 Pet. 175; *Macomber v. Thompson*, 1 Sum. 388; *Brown v. Lull*, 2 *id.* 443; *Drummond's Administrators v. Magruder & Co.'s Trustees*, 9 Cranch, 125; *The Hiram*, 1 Wheat, 440; *The Fortitudo*, 2 Dod. 58; *The Minerva*, 1 Hag. Ad. R. 357; *The Cognac*, 2 *id.* 377; *Ellison v. The Bellona*, Bee, 106; *The Virgin*, 8 Pet. 550.

¹⁶ *Davis v. Child, Daveis*, 71; S. C. 3, N. Y. Leg. Obs. 147; *Kynock v. The Ives*, Newb. 205; *The Larch*, 2 Curt. C. C. 427; *Kellum v. Emerson*, *id.* 79; *The Perseverance*, Blatchf. & H. 385.

justice. It cannot, in a technical sense, be called a court of equity. It is rather a court of "*justice*." "

§ 330. These courts, in the exercise of their admiralty jurisdiction, have three great classes of functions.

They are *Instance courts*, in which are heard and determined civil suits of a maritime character between party and party.

They are *Criminal courts*, in which are tried and punished those maritime offences of which the acts of Congress have given them jurisdiction.

They are *Prize courts*, in which are adjudicated all the various admiralty and maritime questions relating to maritime prizes of war.

As instance courts and prize courts, all causes are heard and determined by the court alone, without the aid of a jury. As criminal courts, they administer justice in admiralty cases, with the aid of a grand jury and a petit jury, like the common-law courts of criminal jurisdiction.

§ 331. *Clerks*.—Each of these courts has power to appoint its clerk. It is the court, not the judge or judges, that has the power of appointment, and the appointment is, in the first instance, properly made by the judge or judges, by a written certificate of appointment. The appointment should always be formally made by an order of the court, duly entered in the minutes. Each clerk, before entering upon the execution of his office, must take the following oath :

"I, A B, being appointed clerk of _____, do solemnly swear, (or affirm,) that I will truly and faithfully enter and record all the orders, decrees, judgments, and proceedings of the said court; and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my ability and understanding; so help me God."

" The *Harriett*, 1 W. Rob. 192; The *Jacob*, 4 Rob. 250; The *Nelson*, 6 Rob. 227; The *Saracen*, 6 Moore, 74; The *Juliana*, 2, Dod. 521; Coote's Prac. 8, 9; The *Trident*, 1 W. Rob. 35; *Andrews v. The Essex Fire & Marine Ins. Co.* 8 Mason, 16.

The clerks must also give a bond with sufficient sureties, (to be approved by the court,) to the United States, in the sum of \$2,000, faithfully to discharge the duties of their office, and seasonably to record the decrees, judgments, and determinations of the court.¹⁸

§ 332. It is the duty of the clerk in admiralty cases, to perform all those services which are usually performed by clerks of courts, — to receive and mark its files, — to keep and affix its seal, — to issue its processes, — to keep its minutes of proceedings and its records, — and to administer oaths, take bail, &c., in court, — being in all these matters, the servant of the court whose power he aids. He has authority by statute, to take bail and depositions in certain cases, and to perform various duties in case of the inability of the judge, as has been before stated; and he keeps the account of the moneys deposited in court. He is bound, at every stated session of the court, to present an account to the court, of all the moneys remaining therein subject to its order, stating particularly on account of what causes said moneys are deposited, which account, with the vouchers, must be filed. He may be attached for contempt, if he refuse or neglect to obey the orders of the court for depositing such moneys,¹⁹ and he may have an attachment against a party for the non-payment of his fees.²⁰

§ 333. In the Southern District of New York, the clerk keeps, as one of the books of the court, an Admiralty Register, in which, as soon as the libel is filed, he enters the title of each admiralty cause, a brief note of the cause of action, the names of the proctors, and chronological minutes of the steps in the cause, to its final determination.

Such a register so greatly promotes the convenience of the court, the clerk, and the parties, and is so useful in preserving the due order of proceedings, and making them accessible to all who may be entitled to know them, that it is almost a matter of neces-

¹⁸ Jud. Act, § 7.

¹⁹ Act, of May 8, 1792, § 8, 10; Ins. 45, Act of March 2, 1800; *ante*, § 321; Act of March 3, 1817.

²⁰ *Caldwell v. Jackson*, 7 Cranch, 276.

sity in courts having much admiralty business, and is so useful in all cases, that it might well be required, by a general rule of the Supreme Court, to be kept in all the courts of the United States.

§ 334. *Proctors and Advocates*.—In all the courts of the United States, the parties may plead and manage their own causes personally, or by the aid of such attorneys or counsel as by the rules of the courts respectively are permitted to manage and conduct causes therein. Attorneys in admiralty courts are called proctors,—from the Latin, *procurator*,—French, *procureur*,—after the usage of the civil law; and counsellors are called advocates. The modes and conditions of admission as proctors and advocates are different in different districts, the whole matter being entirely subject to the rules of the respective courts.

It is the peculiar duty of the proctor to conduct the proceedings out of court,—process, pleadings, entries, stipulations, admissions, consents, settlements, and motions. He is the nominal representative of the party, and his name should appear in all the papers; and all orders should be stated to have been made on his motion.

It is the peculiar duty of the advocate to represent the party in court,—to make motions, examine witnesses, address the court, and advocate the cause.²¹

§ 335. Proctors are more properly appointed by the party in writing; but there is no legal necessity for a written proxy,—a verbal appointment is sufficient; and till denied, the court always presumes the proctor who appears has proper authority. The court may always call upon him to state for whom he is authorized to appear.

If the party have a proctor and advocate, he cannot conduct the cause himself; nor can he call to his assistance one who is not a proctor or advocate of the court.

Both proctor and advocate, while the cause is pending, have full power over it. After final decree, they have no power, except to sue out execution and superintend and direct its enforcement.

²¹ Judiciary Act of 1789, § 35; Betts' Prac. 9, 10, 12.

They have no power to discharge the decree, except on its performance, unless authorized by the party."

§ 336. The power of the proctor and advocate is revocable by the party without cause assigned. It should be done by leave of the court, on notice to the proctor. And, on the application of the party, the general powers of the proctor or advocate may be restricted.

Proctors and advocates are officers of the law, held to the strictest integrity, and the best faith and honor to their clients and the court. They are accountable to the court for their professional conduct, and are subject to be deprived of their privileges and office, and otherwise punished, by attachment, fine, or imprisonment by the court, for violation of professional duty, or for such moral delinquency as would bring into disrepute the administration of justice.

§ 337. The United States are always represented in all cases in court, civil as well as criminal, by the District Attorney of the United States for the district in which the suit is pending, except in the Supreme Court. In that court, the Attorney General of the United States represents the Government."

§ 338. *United States Commissioners*.—By the Act of Feb. 20, 1812, chap. 25, the Circuit Courts of the United States are authorized, whenever the extent of their districts renders it necessary to appoint such and so many discreet persons within the district as may be necessary, to take acknowledgments of bail and affidavits, to have the like force and effect as if taken before a judge of the court. By the Act of March 1, 1817, chapter 30, they are also authorized to take affidavits and bail in civil causes in the District Courts; and are also authorized to take depositions under the 30th section of the Judiciary Act of 1789. By the Act of August

" Jud. Act of 1789, § 35; Betts' Prac. 11; The Whilelmine, 1 W. Rob. 335; The Frederick, 1 Hag. Ad. R. 223; Mynn v. Robinson, 2 Hag. Ecc. 195; Prentice v. Prentice, 3 Phill. 311; Whiah v. Hesse, 8 Hagg. Ecc. 687; In the Goods of Lady H. Finch, id. 255; Betts' Prac. 13, 14; The Harriet, Olc. 222.

" Jud. Act of 1789, § 35.

23, 1842, chapter 188, they are clothed with all the powers that a judge or justice of the peace may exercise, under the sixth section of the Act of July 20, 1790, on the government and regulation of seamen in the merchant service. They are also empowered to exercise all the powers that any justice of the peace, or other magistrate of any of the United States, may exercise in respect to offenders for any crime or offence, by arresting, imprisoning, or bailing the same, under and by virtue of the 32d section of the Judiciary Act of 1789, and to require and to take recognizances of witnesses.²⁴

By the Act of September 16, 1850, it is provided, that in all cases, in which, under the laws of the United States, oaths, or affirmations, or acknowledgments may now be taken or made before any justice or justices of the peace of any state or territory, such oaths, affirmations, or acknowledgments may be hereafter also taken or made by or before any notary public, duly appointed in any state or territory, and, when certified under the hand and official seal of such notary, shall have the same force and effect as if taken or made by or before such justice or justices of the peace. It is further provided that the same powers shall be vested in the United States Commissioners; and all laws, and parts of laws for punishing perjury, or subornation of perjury, committed in any such oaths or affirmations, when taken or made before a justice of the peace, shall apply to any such offence committed in any oaths or affirmations, which may be taken under the act, before a notary public or a commissioner.²⁵

Notaries public are also authorized to take depositions and do such other acts in relation to evidence to be used in the courts of the United States, in the same manner, and with the same effect, as commissioners.²⁶

§ 339. By the rules of the Supreme Court, they are also authorized to take bonds or stipulations in admiralty cases,²⁷ and in cases

²⁴ Act of Feb. 20, 1812; 2 Stat. at Large, 679; Act of March 1, 1817. 3 id. 350; Act of August 23, 1842; 5 id. 516.

²⁵ Act of September 16, 1850, 9 Stat. at Large, 458.

²⁶ Act of July 29, 1854, 10 Stat. at Large, 315.

where the court may deem it expedient or necessary, for the purposes of justice, the court may refer any matters arising in the progress of the suit, to one or more commissioners, to hear the parties and make report therein, with all the power of Masters in Chancery, in references before them, including the power to administer oaths and examine parties and witnesses." This rule unquestionably authorizes the court to refer matters to any person who, by their order of reference, may be appointed a commissioner for that matter alone, but it is also the practice, under it, to refer matters "to a commissioner," leaving the party to select such one of the regularly appointed United States Commissioners, as he may prefer to employ.

§ 340. *The Marshal.*—The marshal of the district is the executive officer of the Supreme Court, the Circuit Courts, and the Districts Courts, in the district for which he is appointed. He is appointed by the President, by and with the advice and consent of the Senate, for four years, removable at the pleasure of the President. His commission is in the following form :

"ULYSSES S. GRANT,

"President of the United States of America,

"To all who shall see these presents, greeting:

"Know ye, That, reposing special trust and confidence in the integrity, ability, and diligence of Francis C. Barlow, I have nominated, and by and with the advice and consent of the Senate, do appoint him Marshal of the United States, in and for the Southern District of New York, and do authorize and empower him to execute and fulfil the duties of that office according to law. And to have and to hold the said office, with all the powers, privileges, and emoluments, to the same of right appertaining unto him, the said Francis C. Barlow, for the term of four years from the day of the date hereof, subject to the conditions prescribed by law.

²⁷ Ad. Rule 5, 35.

²⁸ Ad. Rule, 44.

"In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed. Given under my hand, at the City [L. s.] of Washington, the fifteenth day of April, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America, the ninety-third.

"U. S. GRANT.

"By the President,

"HAMILTON FISH, *Secretary of State.*"

Before he enters on the duties of his office, he must become bound for the faithful performance of the same, by himself and by his deputies, before the judge of the District Court of the United States, jointly and severally, with two good and sufficient sureties, inhabitants and freeholders of the district, to be approved by the district judge, in the sum of \$20,000, and must take, before said judge, as must also his deputies, before they enter on the duties of their appointment, the following oath of office:

"I, A. B., do solemnly swear, (or affirm,) that I will faithfully execute all lawful precepts directed to the marshal of the district of _____ under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal, or marshal's deputy, (as the case may be,) of the district of _____ during my continuance in said office, and take only my lawful fees. So help me God."

§ 341. It is his duty to execute, throughout the district, all lawful precepts directed to him, and issued under the authority of the United States, and he has the same powers in executing the laws of the United States, as sheriffs and their deputies in the several states have, by law, in executing the laws of the respective States. He has power to command all necessary assistance in the execution of his duty, and to appoint, as there shall be occasion, one or

more deputies, who shall be removable from office by the judge of the District Court, or the Circuit Court sitting within the district, at the pleasure of either."

§ 342. If the marshal or his deputy be a party to, or interested in, the suit or proceeding, the suits and precepts therein shall be directed to such disinterested person as the court, or any justice or judge thereof, may appoint, and the person so appointed is authorized to execute and return the same.

In case of the death of the marshal, his deputies continue in office, unless otherwise specially removed, and execute the office in the name of the deceased, until another marshal be appointed and sworn.

The defaults or misfeasances in office of the deputies, as well after as before the death of the marshal, are breaches of the condition of the marshal's bond, and the deputies are responsible to the executors or administrators of the marshal, in the same manner as to him in his life-time."

§ 343. When the marshal or his deputy is removed from office, or his term has expired, he has power to execute all such precepts as are in his hands at the time; and the marshal is answerable for the delivery to his successor of all prisoners in his custody. The removal does not take effect till notice of the appointment of the successor."

§ 344. The United States, at the organization of the government had no prisons, and by a joint resolution, passed September 23, 1789, recommended the legislatures of the states to pass laws, making it the duty of the keepers of the state jails, to receive and keep the prisoners committed under the authority of the United States, the United States paying at the rate of fifty cents a month for each prisoner during the time he should be confined, and also supporting prisoners committed for offences. If any state did

²⁰ Ad. Rule 41; Act of February 28, 1795, to Suppress Insurrections, § 9.

²¹ Jud. Act, 1789, § 28; *vide* Wortman v. Couyngham, 1 Pet. C. C. R. 241; Rogers v. The Marshall, 1 Wallace, 645.

not pass such law, or should retract it after passing it, the marshal is authorized, under the direction of the judge of the district, to have and fit up a convenient place for a temporary jail."

After a prisoner is committed to the state jail, he is no longer in the custody of the marshal, nor controllable by him; and the marshal is not liable for the escape of a debtor committed to a state jail."

§ 345. If the marshal or his deputies neglect or violate their duty, or disobey the order of the court, they may be attached as for a contempt."

The marshal may also, by order of the court, compel the payment of his fees, by summary process of attachment against the party liable to pay them."

²² Conk. Treat. 2d edit. 118, 124; Reso. Sept. 23, 1789; Reso. March 3, 1791; Reso. March 3, 1821.

²³ These provisions, by which all prisoners of the United States are transferred to the state sheriff of the county, have saved the expense of providing jails of the United States; but it may well be questioned whether the inconveniences, risks, and actual evils of thus placing the execution of the U. S. laws, and the protection of the rights of citizens of other states, under the control of state officers, do not more than counterbalance the expense.

Randolph v. Donaldson, 9 Cranch, 76.

²⁴ Act of March 3, 1817; *The U. S. v. The Lawrence*, 7 N. Y. Leg. Obs. 174.

²⁵ *Caldwell v. Jackson*, 7 Cranch, 276; *Anonymous*, 2 Gall. 101.

CHAPTER XIX.

THE PRACTICE OF THE AMERICAN ADMIRALTY COURTS, HISTORICALLY
CONSIDERED.

§ 346. It has been remarked, that the grant of the jurisdiction in all admiralty and maritime cases was made total, because these cases are in some sort international, and at least are of such character as to render it eminently proper that they should be subject to the legislation and control of the general government, instead of being subject to the fluctuating and various regulations of the state governments, which from the necessity of the case, could have no common arbiter, and could not fail to be found disagreeing from, or conflicting with, that great system of maritime law which the interests of commerce require to be maintained in its unity and integrity. For an analogous reason, the admiralty courts of the United States could not fail to be more useful and more acceptable to the people, as their practice should be simplified and made the same in every part of the United States.¹

§ 347. The practice in the courts of the United States, sitting as courts of common law, was made to conform to that of the Supreme Courts of the respective states. As all the states had courts of common law, to which the citizen usually resorted, and with whose mode of proceeding he was acquainted, it was not desirable that the general government should, in that matter, introduce an inconvenient novelty, or establish a uniformity of practice which could hardly fail to be burdensome. On the other hand, the admiralty and maritime jurisdiction was, by the constitution, entirely transferred from the states to the general government, and made a

¹ Betts' Prac. art. xiv.

purely federal jurisdiction, of limited extent and peculiar character, and it was equally desirable that it should be uniform throughout the states, as well as conformable to the course of proceedings in the admiralty courts of other nations, and of the separate states, before the adoption of the constitution.

§ 348. The act to establish the judicial system of the United States was passed on the 24th September, 1789, and five days thereafter, on the 29th of the same month, was passed the "Act to regulate the processes in the courts of the United States." This act adopted, as the practice of the courts of the United States, in the respective states, in suits at common law, the practice of the Supreme Courts of the states, and provided also that "The forms and modes of proceedings in causes of equity and of admiralty and maritime jurisdiction, shall be *according to the course of the civil law*." This act was, by its own provision, to continue in force until the end of the next session of Congress, and no longer.* It was continued May 26, 1790, and Feb. 18, 1791; and repealed, and its place supplied May 8, 1792.† Its necessary effect was, however, to start the courts on that system of practice, and really to impose upon them, in admiralty and maritime cases, the civil law practice, as that under which they must continue to administer justice, even after the expiration of that act, until further provision should be affirmatively made.

§ 349. This adoption, however, of the course of the civil law, without modification or exception, could not fail to be somewhat embarrassing, by keeping the courts fettered by many rules and proceedings, which in the admiralty and maritime courts of other countries, to which ours were to be assimilated, had, long before, been directly abrogated or allowed by tacit neglect to give place to simpler and less technical proceedings; and might, in a measure, defeat the very unity and uniformity which it was intended to

* Process Act of 1789, § 2; 2 Bior. Laws U. S. 72; The St. Lawrence, 1 Black. 528; Manro v. Almeida, 10 Wheat. 473; vide The American Ins. Co. v. Johnson, Blatchf. & H. 10.

† 1 Stat. at Large, 93, 123, 191, 275.

establish. Accordingly, in 1792, Congress passed the act "For regulating processes in the courts of the United States," which provided that the forms of writs, executions and other process, except their style, and the forms and modes of proceedings in suits of admiralty and maritime jurisdiction, should be *according to the principles, rules and usages which belong to courts of admiralty, as contradistinguished from courts of common law*. Subject, however, to such alterations and additions as the said courts should in their discretion deem expedient, or to such regulations as the Supreme Court of the United States should think proper from time to time, by rule to prescribe to any circuit or district court concerning the same.⁴

§ 350. Under this act of 1792, the practice of the courts in admiralty and maritime cases has maintained its characteristic resemblance to the principles, rules and usages of courts of admiralty. The courts, however, in the different districts, have differed from each other in many of the less important details, quite as much as the whole have differed from the admiralty courts of other countries, while in all can be traced the evidence of their common descent from the practice of the civil law.⁵

§ 351. The primitive Roman law-suit had few details and little machinery. The plaintiff himself, without writ, seized his adversary by the neck, and took him by force before the Prætor. The plaintiff told his grievance, the defendant his defence; proof was taken if necessary; the cause was decided without delay; and if the demand was not paid, the defendant was confined as a criminal, or payment was enforced by a forcible sale of his property. Necessity and convenience transformed the power to arrest from the party himself to officers of justice appointed for the purpose. The order of the judge then became necessary, which soon ripened into a process or citation. The judge required a written statement

⁴ Dunlap Prac. 72, 79; Grayson v. Virginia, 3 Dal. 320; Manro v. Almeida, 10 Wheat. 473; Process Act of 1792, § 2; 2 Bior Law U. S. 299; The St. Lawrence, 1 Black. 528.

⁵ The U. S. v. The Little Charles, 1 Brock. 380; Jennings v. Carson, 4 Cranch, 2.

of the plaintiff's case, which soon became the libel. Security to appear and to pay the debt, or bail, took the place of forcible detention; and a written statement of the defence was demanded instead of a verbal one. Delays ensued,—ingenuity, and wisdom, and eloquence were put in requisition,—and from thence sprung the legal profession, and from their acuteness and habits of analysis, grew inevitably and insensibly a complicated and technical system of proceedings, which had come to the greatest perfection of strictness in the time of the empire. Many of the details of that practice are now unknown; and although Brown asks with emphasis,—“How can the practice of the Admiralty Court be intelligible without knowing the practice of the civil law?” and Lord Hardwicke says,—“The Court of Admiralty always proceeds according to the rules of the civil law,” this is true only in a very general sense.*

§ 352. The course of a law-suit in ancient Rome, so far as it can be now ascertained, and even as it exists at this time in the countries subject to the civil law after many centuries of modifications and meliorations, is only of the same type with a suit in admiralty, as conducted in modern days. And the study of that wonderfully refined and artificial mode of proceeding, in all its details of subdivision and systematic distribution of subjects, cannot fail to have a salutary effect upon the mind of the student, in furnishing him a careful analysis and classification of all the elements of a complete system of remedies through the medium of courts of justice, and could not be without its advantage in showing him the origin of many actual rules of practice in courts of admiralty,—still the deviation from that original type is so wide, and so great a proportion of the details have been wisely allowed to fall into disuse, that no attempt will be made to furnish even a synopsis of the Roman practice, nor to elucidate, much less to cover up or encumber that which is in its nature, simple, intelligible and natural, by the obsolete learning and multifarious technicalities of earlier periods or

* Dunlap Prac. 73, 75; 2 Brown Civ. & Ad. Law, 507; Sir Henry Blount's Case, 1 Atk. 295; Lane v. Townsend, Ware, 298, 299; The American Ins. Co. v. Johnson, Blatchf. & H. 17.

other countries. The attempt will be only, in as simple and intelligible a manner as practicable, to give the actual practice of the courts of the United States in admiralty and maritime causes, and this without collecting the local rules of the various courts in which diversity exists, which would only tend to keep up a diversity, that in time might lead to the establishment of several systems of admiralty practice, instead of that uniformity which should be established in all the courts of admiralty and maritime jurisdiction.⁷

§ 353. The actual admiralty practice of modern times, is in truth, so natural and simple, that it is not easy to see why any diversity should exist in the established practice. The deviations from a universal and uniform system of proceedings which may be necessary in particular cases, may well enough be left to the discretion of the court, to be exercised as the circumstances of the case may demand, without, in any manner, affecting the general rule. Congress seems to have felt the importance of this uniformity, and with a view more fully to secure it, to have passed the act of August 23, 1842. Sections six and seven are as follows:*

§ 354. "SEC. 6. That the Supreme Court shall have full power and authority, from time to time, to prescribe and regulate, and alter, the forms of writs and other process to be used and issued in the District and Circuit Courts of the United States, and the forms and modes of framing and filing libels, bills, answers, and other proceedings and pleadings, in suits at common law or in admiralty and in equity pending in the said courts, and also the forms and modes of taking and obtaining evidence, and of obtaining discovery, and generally the forms and modes of proceeding to obtain relief, and the forms and modes of drawing up, entering and enrolling decrees, and the forms and modes of proceeding before trustees appointed by the court, and generally to regulate the whole practice of the said courts, so as to prevent delays and to promote brevity and succinctness in all pleadings and proceedings therein, and to abolish all unnecessary costs and expenses in any suit therein.

⁷ Dunlap Prac. 79; The Mary Jane, Blatchf. & H. 891.

⁸ 5 Stat. at Large, 518.

§ 355. "SEC. 7. That, for the purpose of further diminishing the costs and expenses in suits and proceedings in the said courts, the Supreme Court shall have full power and authority, from time to time, to make and prescribe regulations to the said District and Circuit Courts, as to the taxation and payment of costs in all suits and proceedings therein; and to make and prescribe a table of the various items of costs which shall be taxable and allowed in all suits, to the parties, their attorneys, solicitors, and proctors, to the clerk of the court, to the marshal of the district, and his deputies, and other officers serving process to witnesses, and to all other persons whose services are usually taxable in bills of cost. And the items so stated in the said table, and none others, shall be taxable or allowed in bills of costs; and they shall be fixed as low as they reasonably can be, with a due regard to the nature of the duties and services which shall be performed by the various officers and persons aforesaid, and shall in no case exceed the costs and expenses now authorized, where the same are provided for by existing laws." The powers of the court seem to be confined by the act, strictly to regulating the conduct of a suit.

§ 356. Under that act, the Supreme Court, in 1844, adopted "Rules of Practice of the Courts of the United States, in causes of Admiralty and Maritime Jurisdiction, on the Instance side of the Court,—in pursuance of the act of 23d August, 1842, chap. 188." These rules, although in many respects imperfect as a system of practice, lay down and establish the leading and characteristic outlines of the admiralty practice, leaving the District and Circuit Courts to regulate the practice of those courts, respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty, in all cases not provided for by the rules adopted by the Supreme Court.* These rules, also, pre-suppose a knowledge of the general course of admiralty practice, and of many of its details, as it has come to us from the civil law courts on the continent, modified in England by the practice of the eccle-

* Ad. Rule 46. These Rules are inserted at length in the Appendix.

siastical courts and the Court of Chancery, and to those who are already familiar with the course of admiralty proceedings, these rules are the clear and easily understood introduction of a most salutary reform in the admiralty practice,—abolishing and rendering unnecessary many of the cumbrous and useless forms and proceedings which, in earlier periods, perhaps, were not without practical benefit. The power to regulate the costs and fees, conferred by the seventh section of the act, has never been exercised, and should, perhaps, be regarded as taken away by the Act of February 26th, 1853, so far at least as concerns the officers whose fees are prescribed by that act.

§ 357. The publication of these rules seems to furnish an occasion for a simple commentary upon them, embracing a straightforward account of the proceedings in admiralty suits, in which so much of the universal law and traditionary practice of the courts should be united with the rules of the Supreme Courts and methodically arranged, as should be necessary to furnish a useful book of instruction for learners, and a convenient manual for the more experienced practitioner, and, at the same time, tend to make the practice uniform throughout the United States.

It will be seen that they apply equally to all the courts of the United States, as well the Supreme and the Circuit Courts as the District Courts, in admiralty and maritime cases. Many matters of minor detail have been left to be prescribed by the court, themselves, by their own rules, and many others to be disposed of as they arise, according to the discretion of the presiding judge. In those matters of minor detail, instead of stating the practice of several districts, that of the Southern District of New York is alone given.¹⁰

¹⁰ The Rules of the District Court for the Southern District of New York, are inserted at length in the Appendix, — *vide* Index. In all cases in which the Rules of the Supreme Court regulate the practice, those of the District Court are, of course, abrogated.

CHAPTER XX.

THE GENERAL CHARACTER AND COURSE OF ADMIRALTY
PROCEEDINGS.

§ 358. THE Admiralty Court, as before stated, is bound to determine the cases submitted to its cognizance, upon equitable principles, and according to the rules of natural justice. This principle of the maritime law pervades also the whole practice of the admiralty in the United States. The grand object of doing justice between the parties is superior to technical rules and forms, and where the stricter practice of the English common law, or the civil law, would turn a party out of court, or defeat or pervert justice, by considering an arbitrary rule of proceeding as paramount to all other considerations, the American Admiralty finds, in the educated reason and cultivated discretion of the court, the means of defeating chicanery, rectifying mistakes, supplying deficiencies, and suggesting to the party the means of reconstructing his case, if necessary, without the loss of such real progress as he may have already made.¹

§ 359. Suits and proceedings in admiralty are divided into two great classes,—suits and proceedings *in rem*, and suits and proceedings *in personam*.

Suits *in rem* are against a thing itself, and the relief sought is confined to the thing itself, and does not extend to any person. Suits *in personam*, on the other hand, are against a person, and the relief is sought against him, without reference to any

¹ *Ante*, § § 41, 321; *The Virgin*, 8 Pet. 538; *The Minerva*, 1 Hag. Ad. R. 357; *The Packet*, 3 Mason, 834; *The Zephyr*, id. 343; *Sheppard v. Taylor*, 5 Pet. 709; *Oliver v. Alexander*, 6 id. 145; *The Phebe*, Ware, 355; *The Adeline*, 9 Cranch, 284; *Brown v. Burrows*, Betts, J. Aug. 5, 1837, *Coote's Prac.* 2; *post*, 483.

specific property or thing. In a suit *in rem*, unless some one intervenes and assumes the responsibilities of the controversy, the power and process of the court is confined to the thing itself, and does not reach either the person or the other property of its owner. In a suit *in personam* the court is confined to the rights and liabilities of the person, and, in its execution, proceeds against his property generally, without any regard to its relation to the matter in controversy.³

§ 360. There are no criminal proceedings *in rem*. The only cases of quasi criminal and penal character, are those for the enforcement of the penalties and forfeitures which are imposed by law upon property afloat, under the navigation and revenue laws. They are, like other cases *in rem*, classed with civil causes, and are tried without the intervention of a jury.⁴

§ 361. In certain cases the proceedings *in rem* and the proceedings *in personam*, may be united in the same suit, for the purpose of more complete justice.⁴

§ 362. One of the attempts to limit the jurisdiction of the admiralty, consists of a denial of its power to entertain a suit *in personam*. In England, and in this country on English authority, it has been said, that since the venue has become immaterial, the courts of common law are competent to give relief in all personal actions; and that when the common law can give relief, the admiralty has no jurisdiction; and that the admiralty has jurisdiction *in rem* only because the common law has no power to proceed *in rem*. This point has been urged with some emphasis, although almost all the earliest English cases, and many of the latest, are cases *in personam*. Clerke, in his practice, devotes the first and largest portion of

³ Dunlap Prac. 80; The Merchant, Ab. Ad. 4; Beane v. The Mayurka, 2 Curt. C. C. 72; Marshal v. Bazin, 7 N. Y. Leg. Obs. 342.

⁴ The U. S. v. The Eliza, 7 Cranch, 112; The Commerce, 1 Black. 574; The Slavers, 2 Wall. 383.

⁴ Manro v. Almeida, 10 Wheat. 478; The Zenobia, Ab. Ad. 52. Ad. Rules 13, 14, 15, Appendix.

the work to proceedings *in personam*. The same is true of Boyd, in his proceedings of the Scotch Admiralty. Suits *in personam* have always been of constant occurrence in the continental courts of admiralty, and it is the usual mode of proceeding there; and they constituted, in all periods, a large portion of the business of the British Colonial Courts of Vice-Admiralty, before the American Revolution; and since that period, in the English Admiralty, at home, and in our own courts, suits *in personam* have been of frequent occurrence. It is only remarkable that judges, of distinguished learning and acuteness, should ever have been mystified on the subject.

Wherever there is personal liability in a maritime cause of action, "personal contracts and injuries which concern navigation," the right may be enforced by a suit *in personam*, in the admiralty.

Wherever there is a maritime lien on a thing, the lien may be enforced by a suit *in rem*, in the admiralty.*

§ 363. The party complaining is called the libellant,—the party resisting is called the claimant, in a suit *in rem*, because his right to appear or intervene depends upon his claiming the property or some interest in it. In some cases, a party is brought in, against whom no substantial relief is sought, but who, from his position or relation to the controversy, is bound to answer the libel; in that case, he is more properly called the respondent. In suits *in personam*, the party who defends is usually called the defendant. Both parties are actors. The libellant is also sometimes called promovent,—actor,—plaintiff. The defendant is sometimes called reus,—impugnant,—intervenant,—intervenor.*

§ 364. The familiar principle, that all the parties to a suit are bound by the decree, has its widest application in cases of admiralty suits and proceedings *in rem*. The decree, as has been remarked, can only dispose of the thing, but so far as the thing is

* 2 Brow. Ad. Additional observations at the end of the volume. *Davis v. Child*, 3 N. Y. Leg. Obs. 147; *ante*, §§ 48, 55-59, 98-96, 104-107, 115, 116, 126, 151, 203, 270, 271.

* *Dunlap Prac.* 84; *The U. S. v. Kid*, 4 Cranch, 2; 2 Brow. Civ. 428, 432; *Wood*, Civ. 339; *id.* 375.

concerned, all the world are bound by the decree; that is to say, a decree as to the title, or possession, or sale, or forfeiture of the thing, binds all the world. No man is allowed to come in and say that the decree does not bind him, and that he will have the matter retried; and this is because all the world are parties to the suit. By the regular process of the court, all parties who have any interest in the thing are warned to come in and defend it; and it is therefore said that the whole world are parties in an admiralty cause, and therefore, the whole world is bound by the decision.⁷

§ 365. The reason on which this dictum stands will determine its extent. Every person may make himself a party, and appeal from the sentence. But notice of the controversy is necessary in order to become a party; and it is a principle of natural justice, of universal obligation, that before the rights of an individual be bound by a judicial sentence, he shall have notice, either actual or implied, of the proceeding against him. Where these proceedings are against the person, notice is served personally or by publication. Where they are *in rem*, notice is served upon the thing itself. This is, necessarily, notice to all those who have any interest in the thing; and it is reasonable, because it is necessary, and because it is the part of common prudence for all those who have any interest in property to guard that interest by persons who are in a situation to protect it. Every person, therefore, who can assert any title to a vessel, has constructive notice of her seizure, and may fairly be considered as a party to the libel, but those who have no interest in the vessel which could be asserted in a Court of Admiralty have no notice of the seizure, and can, on no principle of justice, be considered as parties in the cause, so far as respects the vessel.⁸

§ 366. He that has a maritime suit to prosecute, sets forth, in writing, addressed to the judge of the court, his claim, circumstantially and intelligibly, with the greatest simplicity and conciseness,

⁷ *The Neptune*, 3 Hag. Ad. R. 132; *The Attorney Gen. v. Norstedt*, 3 Price, 109; *The Mary*, 9 Cranch, 144; *Croudson v. Leonard*, 4 Cranch, 435.

⁸ *The Mary*, 9 Cranch, 144; *Gelston v. Hoyt*, 3 Wheat. 246; *The Commander in Chief*, 1 Wall. 52.

and closes with a prayer for the relief which he desires. This is called a libel, from the Latin *libellus*, a little book. It is signed by the party, and verified by his oath, and presented to the clerk of the court, with security when necessary. The clerk files it and issues the proper process to the marshal of the district, who executes it according to its direction, and takes the security required by law.*

§ 367. The defendant appears, and in the same circumstantial, simple, and concise manner, sets forth, in writing, what he has to say in answer and defence to the suit. This is called an answer, which being signed and sworn to, is also filed with the clerk. The libellant, then, if he desires to dispute the answer, files a general denial. This is called a replication, and the cause is at issue. This was the strict admiralty practice in the Southern District of New York till 1854, when it was abolished by the fifty-second Admiralty Rule. That rule provides that when the defendant, in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication, general or special, shall be allowed. But within such time after the answer is filed as shall be fixed by the District Court, either by general rule or by special order, the libellant may amend his libel, so as to confess and avoid, or explain, or add to the new matters set forth in the answer; and within such time as may be fixed, in like manner, the defendant shall answer such amendments."†

§ 368. If, however, the defendant finds that, on the libel itself, the libellant ought not to have the relief for which he prays, or that the court have not jurisdiction, instead of answering the facts alleged in the libel, he may except to the libel, stating, in written exceptions, the points in which he considers the libellant's case defective. Or, if he have any single fact which should constitute a complete bar to the action, he may set that up alone, in an exceptive allegation, and rely upon it as a bar, or he may unite the whole in an answer,—answering as to all the facts in the libel,

* Betts' Prac. 16; *Hutson v. Jordan*, Ware, 385.

† *The Mary Jane*, Blatchf. & H. 394, 400, note.

and setting up others in avoidance or in bar, and stating his exceptions to the libel,—and derive the same advantage from them as if he had set them up in separate pleadings. It was formerly held, that objections to the jurisdiction should be set up at the commencement of the proceedings, but it is now well settled, that objection to the jurisdiction may be taken at any stage of the proceedings.¹¹

This is true, however, in its full extent only, where the want of jurisdiction springs from the subject matter of the action. Where it is merely a matter of personal exemption or privilege, the court will, if practicable, hold that the appearance and answer of the defendant is a waiver of the exemption or privilege.¹² In like manner, the libellant may except to the answer for scandal, impertinence, or insufficiency, and submit its form or its substance to the decision of the court, before incurring the expense of a trial.

§ 369. Whenever a party desires the order of the court, regulating, correcting, modifying, or arresting the proceedings in a cause, or where any one desires to institute proceedings of an independent or summary character, without any formal suit or process,—of which the exercise of admiralty powers furnish many instances,—a petition or motion is the usual mode of bringing the matter originally before the court, and the matter is carried to its final result, without the introduction of witnesses or the usual forms of a trial.

If, during any stages of the cause, security be required, it is usually given by stipulation, not under seal, instead of by bond or recognizance under seal.

§ 370. The rules of pleading in admiralty do not require all the technical precision and accuracy which is necessary in the practice of the courts of common law, but they require that the cause of action should be plainly and explicitly set forth, in

¹¹ *Ward v. Thompson*, Newb. 95.

¹² *Betts' Prac.* 52; *Prankard v. Deacle*, 1 Hag. Eccl. 185; *The Girolamo*, 3 Hag. Ad. B. 173; *The Gladiator*, id. 840; *The Eliza Jane*, id. 387; *The Protector*, 1 W. Rob. 62; *The Alexander*, id. 298; *The Sarah Jane*, 7 Jur. 659; *Taylor v. Morley*, 1 Curteis, 481; *The Bee, Ware*, 332.

clear and intelligible language, so that the adverse party may understand what is the precise charge which he is required to answer, and make up an issue directly upon the charge. Since the evidence must be confined to the matters put in issue by the pleadings, and the decree must follow the allegations and proofs, the pleadings cannot fail to be of great importance, and good pleading is nowhere more important, or more characteristic of the best professional ability, than in admiralty causes.¹³

§ 371. There are no established or necessary forms, to which the pleadings or other proceedings or entries must conform,—a party is at liberty to adopt such form and such phraseology as may best suit his taste, taking care that, in appropriate language, he bring his matter fully and intelligibly before the court. It is, nevertheless, shown by universal experience, that well framed and appropriate forms for the various steps of judicial proceedings, greatly contribute to the convenience of suitors and proctors, and promote that certainty, regularity, and intelligibility, which constitute the perfection of such proceedings, and that uniformity which is so desirable.¹⁴

There are inserted in the text, only such characteristic forms as may be necessary for the purpose of illustration and direction, and there is added, at the end of this volume, a more complete collection of forms, adapted to American Admiralty practice, than has been before brought together.

¹³ *Elwell v. Martin*, Ware, 53; *The William Harris*, id. 367; *McKinlay v. Morrish*, 21 How. 347; *Dupont v. Vance*, 19; id. 162; *The Transport*, and *The W. E. Cheney*, 1 Benedict, 86; *The Havre*, and *The Scotland*, id. 295.

¹⁴ *Betts' Prac.* 17, 18.

CHAPTER XXI.

PRACTICE OF THE DISTRICT COURT.—THE LIBEL.

§ 372. No process can issue from the District Court till the libel is filed in the clerk's office, from which the process is to issue. The principles of the practice in this respect being, that no process should issue except as the act of the court, and that the court cannot exercise a proper discretion in issuing the process, till the cause of action is properly placed before it, with a proper prayer for relief. The first proceeding is, therefore, the libel or information. It is called a libel in suits by individuals,—an information, or libel of information, in suits by the government. Libels on behalf of the government are not required to be sworn to.¹

§ 373. The libel is a statement of the case upon which the libellant founds his right to recover, closing with a prayer for the proper relief. It should contain,—the address to the court, a statement of the names of the parties, the general nature of the *action*, the *facts* which entitle the party to recover, a prayer for the relief which the party seeks, and for the process by which the adverse party or thing is to be brought before the court.²

The following is the form of a libel *in personam* :

§ 374. "To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York:

"The libel of Ebenezer N. Hinckley, of the city of New York,

¹ Ad. Rule 1; Dunlap Prac. 111, 118; Hutson v. Jordan, Ware, 385.

² Betts' Prac. 18; Hall's Prac. 121; Dunlap Prac. 112.

mariner, against David L. Robinson, of the same city, merchant, owner of the ship *Majestic*, in a cause of contract, civil and maritime, alleges as follows :

§ 375. "*First*. That said David L. Robinson was, at the time in this article mentioned, owner of the ship *Majestic*, of New York, and said ship was lying in said port ; and being such owner, sometime in the month of December, in the year eighteen hundred and thirty-seven, the said Robinson employed the libellant to take charge of and command said vessel as master, for a voyage from New York to Antwerp in Belgium ; thence to such other port or ports as might be deemed expedient, and back to a port of discharge in the United States, at the wages of sixty dollars per month. And that in pursuance thereof, the libellant entered on board, and took charge of said ship as master thereof, on or about the eighth day of said month of December.

§ 376. "*Second*. That the said vessel having taken on board a cargo, the libellant, as master, proceeded with her for the port of Antwerp. That, owing to the ice, they were entirely unable to reach Antwerp at that time, but were forced to put into Cowes, in England, where they remained until they were enabled, by the thawing of the ice, to reach Antwerp. That they safely arrived at Antwerp, and there discharged the cargo, and made freight. That the libellant then proceeded, with said vessel in ballast, to the port of Bristol, in England, and there took on board a cargo, and returned with said vessel to the port of New York, where she arrived, and discharged her cargo and made freight. And, on the 5th day of December, 1838, the said voyage, for which the libellant had so engaged, being duly performed, the libellant was discharged from the said ship by said Robinson.

§ 377. "*Third*. That during the whole time the libellant was master of said ship, he well and truly performed his duty as such master ; whereby he was entitled to receive from the said Robinson, owner as aforesaid, the balance of his wages, amounting to five hundred and ninety-eight dollars and upwards, over and above

all payments and just deductions; but said Robinson has refused, and still refuses, to pay the same.

§ 378. "*Fourth*. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

"Wherefore, the libellant prays that process, in due form of law, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said David L. Robinson, and that he may be required to answer on oath this libel, and the matters herein contained. And that this Honorable Court would be pleased to pronounce for the wages aforesaid; and to give the libellant such other relief in the premises as law and justice may require. And also to condemn the said David L. Robinson in costs.

"EBENEZER N. HINCKLEY.

"Sworn, Jan. 10, 1838, before me,

"GEORGE W. MORTON, *U. S. Commissioner*."

§ 379. The address to the judge of the court, by his name and his official description, with which the libel should commence, is the same in libels of every class. The statement of the parties, and of the general nature of the action, varies according to the circumstances of each case. In libels *in rem*, the simplest form is,—

"The libel of A. B., of the city of Boston, merchant, against the ship Seabird, whereof C. D. is, or lately was master; her tackle, apparel, and furniture, and also against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows."

PARTIES IN THE LIBEL. — LIBELLANTS.

§ 380. The party really entitled to the relief should always be made libellant. The practice of instituting a suit in the name of one person, for the benefit of another, to whom the right has been

* Ad. Rule 23. *Vide* the various precedents of Libels referred to in the Index.

transferred, and of making one person libellant as the representative of many others, does not obtain in admiralty,—though in cases of salvage, and some other cases, something analogous to it occurs, as will be shown.

Some officers of the United States, are authorized to sue in their own official name, although the suit be really for the benefit of the government. All persons entitled, on the same state of facts, to participate in the same relief, and no others, should be joined as libellants, whether the suit be *in personam* or *in rem*.⁴

§ 381. In cases of salvage service, in which usually many persons concur with various degrees of risk and merit, although each man's compensation depends upon the circumstances of his own comparative merit, and he must recover upon his own case, it is the uniform practice for all to unite in the same suit, as well those who actually labor in making the salvage, as those who are entitled to share in the compensation by virtue of their legal relation to the subject matter. Nor is there any objection to any one or more of salvors instituting the suit in their own names, for the benefit of all others, who shall come in and contribute to the suit, or shall be ascertained to be entitled to share in the salvage. This is, in a measure, necessary because from the very nature of a salvage service, the salvage is but one thing, of which each man is entitled to a share, always relative to that of the others and to the whole; and it is impossible that the court should properly ascertain any one man's share, without having the merits of all before it for definite adjudication.⁵

§ 382. In suits against a vessel for mariners' wages, in cases provided for by the act of Congress in relation to seamen in the merchant service, all the seamen having like cause of complaint are required to join in the same suit; and this too, although their cases are necessarily distinct, and each man must recover on his own contract

⁴ Dunlap Prac. 84, 85; Fretz v. Bull, 12 How. 468; The American Ins. Co. v. Johnson, Blatchf. & H. 9.

⁵ 1 The Henry Ewbank, 1 Sum. 400; Stratton v. Jarvis, 8 Pet. 4; The Boston, 1 Sum. 329; The Edward Howard, Newb. 522; The Charles Henry, 1 Benedict, 8.

and service, entirely dependent of, and without any relation to, his fellows. This rule is imposed by the statute, and is supposed to have been established simply with a view to avoid unnecessary multiplicity of suits and accumulations of costs.*

§ 383. In cases of seizure, the suit must be brought in the name of the United States, unless otherwise expressly provided by statute, in which case the provisions of the statute must be complied with.†

§ 384. The master's general agency for the owners in relation to the ship, and his special property in her and her cargo and freight, authorize him to bring in his own name, actions which the owners have in relation to the ship, her cargo or freight.

There are also large classes of cases in which not only the owners, but other persons,—as the seamen, the shippers, the passengers,—are also interested, which may be brought in the name of the master, in the behalf, and for the benefit of all. Such are prize cases, salvage cases, collision cases, average cases. In such cases, the libellant should add to his own name and description, in the statement of the parties, a statement that he sues for himself and for others, as the case may be, naming them.

This is one of the advantages of the admiralty practice, inasmuch as instead of the multiplicity of suits and circuitry of action, which in the common law courts are often required, one plea, trial, and decree, determine the whole controversy between all the parties to it.*

§ 385. All persons are presumed to have a right to sue in their own names, till the contrary appear. There are, however, certain exceptions to this rule coming under another general rule, that parties having no independent will or discretion must be represented in court by other persons, who are competent to act. Married women prosecute by their husbands or next friends,—minors by their guardians tutors, or next friends,—lunatics and persons *non compos mentis* by tutor, committee, or *guardian ad litem*. The estates

* Seaman's Act of July 20, 1790, § 6; Dunlap Prac. 85; *post*, §§ 504, 506.

† Betts' Prac. 69.

* Dunlap, Prac. 85; The Commander in Chief, 1 Wall. 51, 52.

of deceased persons are represented by executors, administrators or other legal representatives.*

§ 386. Courts of Admiralty being in some degree international courts, it seems that in them parties are allowed to proceed by virtue of their right at the place of their domicile,—in other words, that the party may proceed according to his actual right. If a married woman have a maritime right of action which, by law, she enjoys and may enforce in her own name without the consent or control of her husband, or against him as a party, she may sue in her own name in admiralty. If a party have any character as heir, executor, administrator, guardian, &c., in which he is entitled to sue by the law of his domicile, he may sue in that character in the admiralty here, in virtue of his character at home.

When a party's right to sue as he does, depends upon any character, office, duty or right, he must be so described in the libel as to show his right."

PARTIES IN THE LIBEL—DEFENDANTS.

§ 387. The libellant may, in one form or another, have his action against all persons and things to which he has a right to resort for relief. If there be a person or persons, or corporation personally responsible to him, jointly or severally, in a maritime cause of action, he may proceed against them by a libel *in personam*. If they be only severally responsible, they must be sued separately; if they be only jointly responsible, they must be sued jointly. If, however, joint debtors be liable each for the whole debt, the libellant may properly institute his action against them all by a general description, naming specifically only those whose names are known to him, or those who are within the reach of the process of the court, and thus proceed to his decree against the parties thus brought in, or such as choose to appear, leaving them to seek the proper contribution from their associates not actually brought in.

* Wood. Civ. Law, 339; Consett. Prac. 50; 1 Brown Civ. Law. 139; Betts, 18; Plummer v. Webb, 4 Mason, 380; Emerson v. Howland, 1 id. 45; Plummer v. Webb, Ware, 75; Steele v. Thacher, id. 91; The Etna, id. 462.

¹⁰ Steele v. Thacher, Ware, 91; Betts' Prac. 19; Dunlap Prac. 88.

So too, if there be a thing or things, vessel, cargo, freight, merchandise, proceeds, against which the libellant has a maritime lien, or privilege, or right, no matter how acquired, he may enforce it by a libel *in rem*.

If the general owner or the special owner, that is to say, one having a special property,—a right of possession and control,—as the master or charterer, (owner of the voyage,) be, by virtue of his relation to the thing, personally responsible to the libellant for a demand which is a lien upon the thing, then the libellant may unite the two modes of proceeding, and may enforce his right by a libel *in personam* and *in rem*.¹¹

§ 388. Whomsoever and whatsoever he proceeds against should be aptly and legally described in his libel, in the introductory statement of the parties. A sufficient reason for this is found in the fact; that the real controversy is more quickly perceived, and the necessary facts are more readily and certainly arranged, if the general relations of the parties be first distinctly understood.

The Supreme Court, in the General Admiralty Rules, have specified several cases of joinder of persons and things in a few of the classes of admiralty and maritime cases, and others are left to be governed by the principles of maritime responsibility.¹²

§ 389. In all suits by material-men, for supplies, repairs, or other necessities, for a foreign ship, the libellant may proceed against the ship and freight *in rem*, or against the master or the owner alone, *in personam*. In the case of a domestic vessel only the proceeding *in personam* can be resorted to.¹³

§ 390. In all suits for mariners' wages, the libellant may proceed against the ship, freight and master, or against the ship and

¹¹ *Brown v. Lull*, 2 Sum. 443; *Sheppard v. Taylor*, 5 Pet. 675; *Cutler v. Rae*, 7 How. 709.

¹² *Vide* the precedents referred to in the index.

¹³ Ad. Rule 12; *Vide* *The Eledona*, 2 Benedict, 31; *ante* § 267 to 274, and precedents.

freight, or against the owner alone, or the master alone, *in personam*.¹⁴

§ 391. In all suits for pilotage, or for damage by collision, the libellant may proceed against the ship and master, or against the owner alone, or the master alone, *in personam*.¹⁵

§ 392. In all suits for an assault and beating on the high seas, or elsewhere, within the admiralty and maritime jurisdiction, the suit must be *in personam* only.¹⁶

§ 393. In all suits against the ship, or freight, founded on a mere maritime hypothecation, either express or implied, of the master, for moneys taken up in a foreign port, for supplies, repairs, or other necessities for the voyage, without any claim of marine interest, the libellant may proceed either *in rem*, or against the master or the owner alone, *in personam*. In these cases, money is borrowed by the master, on the responsibility of the owner, and the ship is mortgaged as security. The ship, the master, and the owner are all liable for the debt, and may, on principle, be joined in the action.¹⁷

§ 394. There are other cases, in which money is borrowed solely on the credit of the ship herself, in which marine interest is charged, and the money is put at the risk of the voyage and the safety of the ship. These are strict cases of bottomry, and in all suits on bottomry bonds, properly so called, the suit must be *in rem* only, against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless some personal misconduct have raised a personal liability; as

¹⁴ *The Citizens' Bank v. The Nantucket Steamboat Co.* 2 Story's R. 16; *Arthur v. The Cassius*, id. 99; *The Triune*, 3 Hag. Ad. R. 114; *The Merchant*, Abbott, 7, 8; *ante*, §§ 277-281, and precedents.

¹⁵ Ad. Rule 14, 15; *The Hope*, 1 W. Rob. 155; *The Volant*, id. 383; *The Atlantic & Ogdensburgh*, Newberry, 157; *The Anne*, 1 Mason, 508-512; *Newell v. Norton*, 3 Wall. 257; *Vide The Richard Doane*, 2 Benedict, 111; *ante*, §§ 289, 312, and precedents.

¹⁶ Ad. Rule 16; *ante*, § 309, and precedents.

¹⁷ Ad. Rule 17; *ante*, §§ 290-293, and precedents.

where the master has, without authority, given the bottomry bond, or, by his fraud or misconduct, has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct, or wrong, lost or subtracted the property, in which cases the suit may be *in personam*, against the wrong-doer."

§ 395. In all possessory or petitory suits between part owners, or adverse proprietors, or by the owners of a ship, or the majority thereof, against the master of a ship, for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part owners against the other, to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others, to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process must be by an arrest of the ship and by a monition to the adverse party to appear and make answer to the suit."

§ 396. The foregoing provisions, in form permissive, are not supposed to be exclusive of any other joinders of persons or property, which may be authorized by sound principle. Thus, although in the 18th rule the court speak of following the proceeds of property, only in cases of bottomry, it is supposed that the general rule, uniformly held by the court, will still prevail, that wherever the property affected by a lien or privilege has been converted into proceeds, under such circumstances as not to destroy the lien or privilege, the proceeds in whosoever hands they are, may be followed by suit, as effectually and as far as the thing itself might have been. In like manner, numerous familiar maritime causes of action are not mentioned. Thus the court have always held that the admiralty has jurisdiction of the whole subject matter of damage on the high seas,—every personal injury, every violent dispossession of property on the ocean belongs to the admiralty jurisdiction. Still within these great classes, the rules enumerate only the cases of collision and assault or beating,—and simi-

¹⁸ Ad. Rule, 18; *Dean v. Bates*, 2 Wood. & Minot, 92; *ante*, § 292, and precedents.

¹⁹ Ad. Rule, 20; *ante*, §§ 274, 311, and precedents.

lar omissions will be observed in other classes. The Supreme Court have not the power to exclude from the admiralty jurisdiction cases which the constitution and the laws have placed within that jurisdiction, and the characteristic, cautious propriety of that court, forbids the assumption that they intended to exercise powers which did not belong to them."

All rights against the thing to recover a demand are in the nature of a mortgage or hypothecation. The thing is pledged either by operation of law, or by the act of the parties, and the rule of the civil law was that the party had his choice to proceed against the party, or the thing, or both."

The specification of particular causes of action in Rules 12 to 20, inclusive, is therefore presumed not to exclude other causes of action, but to be intended only to lay down a rule in those enumerated cases, leaving others to the operation of analogous principles or of the general rule.

§ 397. So the admiralty rules of the Supreme Court, with regard to joinder of person and thing, it is presumed, cannot be considered as repealing or abrogating the sound and salutary principle, that, wherever the libellant's cause of action gives him, at the same time, a lien or privilege against the thing, and a full personal right against the owner, he may by a libel, properly framed, proceed against the person and the thing, and compel the owner to come in and submit to the decree of the court against him personally, in the same suit, for any possible deficiency.

§ 398. If parties are improperly introduced, they may be struck out of the libel, on motion, or, more properly, the misjoinder may be made the subject of an exception to the libel."

If new or further parties are found to be necessary, they may be added by order of the court on petition, or they may be added by a supplemental libel. But objections to parties, or for want of proper parties, must be made in the court of original jurisdiction.

³⁰ *Sheppard v. Taylor*, 5 Pet. 675; *Oliver v. Alexander*, 6 id. 148; *Cutler v. Rae*, 7 How. 729; *The Eledona*, 2 Benedict, 31; *ante*, §§ 305, 308, 309, 310, 311.

³¹ 5 *Encyc. de Jura*. 103, art. Hypoth.; *Kauf. Mack* 396, note.

³² *Dunlap's Prac.* 87; *Elwell v. Martin*, Ware, 53.

Such objections cannot be raised for the first time in the appellate court."

§ 399. In the statement of the parties in libels *in personam*, the names, occupation and places of residence of the parties should be stated, if they are known, and in libels *in rem*, it should be stated that the property is in the district."

§ 400. After the statement of the parties, the nature of the cause should be shortly stated "*in a cause of contract, civil and maritime, or of tort or damage, or of salvage, or of possession, or of prize or forfeiture, or penalty, civil and maritime, as the case may be.*" The actions known to the civil law were classified in various modes, and the classes were almost as numerous as the transactions of men. That extreme classification is now considered unnecessary, and every civil cause of admiralty and maritime jurisdiction may be included in one or the other of the above classes.

THE STATEMENT OF THE CAUSE OF ACTION.

§ 401. The libel must allege in distinct articles, the various facts upon which the libellant relies to support his suit, so that the defendant can answer, distinctly and separately, the several matters contained in each article. The amount claimed to be due should be stated, and it should be stated without unreasonable exaggeration. For the convenience of all parties, the articles should be numbered Article first, second, &c., in paragraphs, according to the subject matter, of greater or less length, as the orderly statement of the cause of action may require."

§ 402. This statement should contain every fact necessary to give the court jurisdiction, and to entitle the libellant to the remedy or relief which he seeks, and it should contain nothing else." The

²² Betts' Prac. 21; Dunlap Prac. 87; The Commander-in-Chief, 1 Wall. 52.

²⁴ Ad. Rule 23; The Bee, Ware, 332; Betts' Prac. 19.

²⁶ Ad. Rule 23; The Bee, Ware, 336; The Boston, 1 Sum. 328; The Graces, 8 Jur. 501; Huteon v. Jordan, Ware, 399; Ad. Rule 27.

²⁸ The Boston, 1 Sum. 331; The Sarah Ann, 2 id. 209; McKinlay v. Morrish, 21 How. 346; *post*, § 517.

statements of fact may be more or less detailed and amplified according to the taste of the pleader, but simplicity, compactness, orderly arrangement, and severe logical accuracy, in the common narrative style, are the perfection of pleading in admiralty, and the court properly discourages the voluminous and involved statements, repetitions, exaggerated and cumulative epithets, which discredit some systems of pleading."

§ 403. In suits *in personam*, the libellant may join in the same libel any number of causes of action, whether of contract or tort, between the same parties. This is another advantage of the admiralty course of proceeding, which the different forms of action, the different forms of pleas, the different modes of trial, and the different kinds of judgments and executions, all having their technical niceties, in common law proceedings, renders impracticable in common law courts.

In like manner, if the suit be *in rem*, the libellant may join, in the same libel, any number of demands against the thing; indeed, it would seem that he must do so, inasmuch as he could hardly be permitted again to attach the thing in the innocent hands of a purchaser at his own sale. Each separate cause of action should be set forth in a distinct and orderly manner in a separate article."²⁷

§ 404. In cases in which one party sues for himself and others, the stating part of the libel should contain facts to show that others are entitled, and who they are, and how they are entitled;—and wherever several parties are joined, and the rights of the parties are distinct, separate and independent, there each libellant's case should be stated in an article by itself, not only with a view to the convenience of the opposite party and of the court, but also because, in such cases, the right to appeal is the individual right of each party, and the final decree

²⁷ *The Towan*, 8 Jur. 222; *The Matchless*, 1 Hag. Ad. R. 97; *Captures on The Jamaica Station*, id. 181; *Conk. Treat.* 2d ed. 353; *The Hoppet v. The U. S.* 7 Cranch, 389; *Bette's Prac.* 19; *Thomas v. Lane*, 2 Sum. 1; *Conk. Ad.* 419.

²⁸ *Dunlap's Prac.* 88; *Bette's Prac.* 20; *contra*, *Pratt v. Thomas, Ware*, 427; *Treadwell v. Joseph*, 1 Sum. 390.

should be for or against each individual, (or set of partners,) by name, and, so far as as he is concerned, confined to him. In practice, this is often neglected, and, in case of several parties, a general joint libel and answer are put in, and a general decree made, which leads to embarrassment and needless expense, in case of an appeal by some, and not all the parties, or of separate appeals by all."

§ 405. The libel should contain a distinct statement of the amount claimed, with reasonable common accuracy and truth. The court disapproves of actions being entered in an amount disproportioned to any reasonable estimate of the amount justly recoverable; and when that seems to have been done for any sinister purpose, will sometimes manifest its displeasure in disposing of the question of costs.

The court is not, however, bound by the amount of damages claimed in the libel. When it appears on investigation, that the libellant has merits, and that justice requires a larger remuneration than he has demanded in his libel, the court is not precluded by any technical forms from doing full justice. Sir William Scott, in a case of salvage, when the libellant claimed £800, gave £2,100, notwithstanding the objection was made. The whole matter, says he, is before the court; and I think the court is by no means limited by any particular demand."

§ 406. In cases of seizure for a breach of the laws of revenue, or navigation, or other laws of the United States, the information or libel must state the place of seizure, whether it be on land, or on the high seas, or on other navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought, and where it then is. The libel must also propound, in distinct articles, the matters relied on as grounds, or causes of forfeiture, and

" *Ante*, §§ 380, 381, 382, 384; *Sheppard v. Taylor* 5 Pet. 714; *Oliver v. Alexander*, 6 id. 143; *The Henry Ewbank*, 1 Sum. 407.

" *The Graces*, 8 Jur. 501; *Pratt v. Thomas, Ware*, 434; *The Jonge Bastiaan*, 5 Rob. 287.

aver the same to be contrary to the form of the statute, or statutes of the United States, in such case made and provided, as the case may require."¹

It is sufficient to describe the offence in the words of the statute, provided it be so described, that if the allegation be true, the case must be within the law. It is, in no case, necessary to state any fact which is only matter of defence to the claimant, nor to negative exceptions, introduced by way of proviso, or by subsequent statutes."²

§ 407. If the libellant desires to have his process contain a clause to attach the credits and effects of the defendant, in case he cannot be found, there should be inserted in the libel a statement that the defendant has credits and effects in the hands of one or more persons, who should be named therein. This is necessary to enable the marshal to summon the garnishee."³

§ 408. The judicial power of the United States being limited, the courts of the United States are of limited jurisdiction, limited by the grant of judicial power in the Constitution, and limited by the Acts of Congress distributing that jurisdiction to the Courts. Their action extends, and must be confined to the cases, controversies, and parties over which both the constitution and the laws have authorized them to act. It is therefore a cardinal rule, that the libel must, on its face, state a case which is within the jurisdiction of the court. It is not enough, nor is it at all necessary to make the general statement that the case is within the jurisdiction, but

¹ The U. S. v. Hayward, 2 Gal. 485, 497; Cargo of the Aurora v. The U. S. 7 Cranch, 382; The Hoppet v. The U. S. id. 389; The Caroline v. The U. S. id. 496; The Anne v. The U. S. id. 570; The Samuel, 1 Wheat. 9; The Mary Ann, 8 Wheat. 380; The Emily, 9 Wheat. 381; The Merino, &c. id. 391; Conk. Treat. 2d ed. 352 353, *et seq.*; Ad. Rule 22.

² The Samuel, 1 Wheat. 9; The Mary Ann, 8 Wheat. 380; The Emily, 9 Wheat. 381; The Merino, &c. id. 391; Cargo of the Aurora v. The U. S. 7 Cranch, 382 The U. S. v. Hayward, 2 Gal. 485, 497.

³ Ad. Rule 2, 37.

the facts necessary to give jurisdiction must be set forth in the libel. In practice, however, the stating part of the libel usually closes with a general account that the facts are true, and within the jurisdiction of the court."

THE PRAYER OF THE LIBEL.

§ 409. After the stating part of the libel, follows the prayer for the proper process to enforce the rights of the libellant by bringing the party, or the property defendant, before the court, and for such relief and redress as the court is competent to give in the premises. If the suit be *in personam* alone, the process and the relief must be merely personal. If the suit be *in rem* alone, the process and the relief are confined to the thing, and no person is under any legal obligation to appear and defend the suit, or will incur any personal liability by neglecting to do so. If the suit be *in personam* and *in rem*, then the prayer is for a process, which will bring before the court both the person and the thing, for adjudication in the matter of the libel."

§ 410. If the suit be *in personam* alone, the libellant may pray for a simple citation, in the nature of a summons to appear and answer to the suit;—or, in cases where the law permits an arrest, for a simple warrant of arrest, in the nature of a *capias*,—or for a warrant of arrest with a clause therein, if the defendant cannot be found, to attach his goods and chattels to the amount sued for, or, if such property cannot be found, to attach his credits and effects to the amount sued for, in the hands of garnishees, and to summon the garnishees to appear and answer, on oath or solemn affirmation, as to the debts, credits, and effects of the defendant, in their hands, and to such interrogatories touching the same as may be propounded by the libellant. If the suit be *in rem*, the process prayed for, unless otherwise provided by statute, must

" *Ante*, §§ 396, 397, Betts' Prac. 20.

" *Ante*, § 15; Betts' Prac. 16.

be a warrant of arrest of the thing itself, and a monition to all persons interested to appear by a day certain and intervene for their interest."³⁶

§ 411. Immediately after the prayer for process, follows the prayer for the specific and general relief which the libellant desires,—in suits *in rem*, that the property may be condemned and sold, in seizure cases, as forfeited to the United States, in other cases that it may be condemned and sold to pay the demand of the libellant stated in the libel,—or that the vessel may be decreed to belong to the libellant, or delivered to him, or otherwise, as the case may be, according to the relief to which the party may be entitled; or, in suits *in personam*, that the defendant may be decreed to pay the debt or damages claimed by the libellants; and in all cases, that the defendant may be condemned to pay the costs.

§ 412. If the libellant desire to address himself to the conscience of the defendant, and to compel him to give testimony as to the matters in controversy, he may close his libel with interrogatories, touching all and singular the allegations in the libel, and demand that the defendant answer them on oath. The practice of thus inserting proper interrogatories, tends greatly to the promotion of justice, and its prompt and economical administration, by reducing to the narrowest compass that portion of the cause which is to occupy the time of the judge and the witnesses in court. Since the change in the law of evidence, which allows the parties to actions to testify as witnesses, interrogatories annexed to libels are rarely used."

³⁶ Ad. Rule 2, 9, 37; *vide* the forms of prayers in the Precedents of Libels, in the Appendix.

³⁷ Conk. Treat. 2d ed. 356; *vide* precedents in the Index; Ad. Rule, 23, 37.

CHAPTER XXII.

COMMENCEMENT OF THE SUIT.

§ 413. THE filing of the libel is the commencement of the suit. Before being filed, the libel should be signed by the party or his agent, and by his proctor, and verified by oath. It is usually signed by an advocate,—but this is not necessary. If the libel prays for only a citation or summons, without arrest, the libel need not be sworn to. It must be filed in the clerk's office from which the process is to issue, before the mesne process can be issued.

The District Courts in their own rules, provide in what cases and in what amounts security shall be given for costs, by the libellant, before commencing the suit. This is usually given by *stipulation*, which, as before stated, is the proper name for an undertaking of security in admiralty, and not by bond under seal, although there is no legal objection to its being in the form of a bond. A stipulation with surety for costs, is required in the New York District in all cases, except those of American seamen prosecuting for mariners' wages. In suits *in personam* the amount of the stipulation is \$100,—*in rem*, \$250.

These stipulations being undertakings in court, they are usually prepared by the clerk, and executed and acknowledged before him, but there is no legal objection to their being prepared by the proctor, and acknowledged before any United States commissioner, or the judge. The surety must justify as bail, by a written affidavit on the stipulation, that he is a resident and worth twice the amount of his stipulation over and above his debts.¹

§ 414. The stipulation for costs is in the following form :

¹ *Hutson v. Jordan*, Ware, 385; *Pratt v. Thomas*, id. 427; Ad. Rule 1; *Martin v. Walker*, Abb. Ad. 579; *Lane v. Townsend*, Ware, 286, 296; Ad. Rules 5, 88.

"DISTRICT COURT OF THE UNITED STATES OF AMERICA, FOR THE SOUTHERN DISTRICT OF NEW YORK.

"STIPULATION

"*Entered into pursuant to the Rules of Practice of the Court.*

"Whereas, a libel was filed in this court, on the tenth day of January, in the year of our Lord one thousand eight hundred and forty-six, by Ebenezer N. Hinckley, against David L. Robinson, in a cause of contract, civil and maritime, for the reasons and causes in the said libel mentioned, and praying that a monition may issue against the said defendant. And James Jackson, of the city of New York, merchant, surety, and the said libellant, the parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or his surety, execution may issue against their goods, chattels and lands, for the sum of one hundred dollars:

"Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and are bound, in the sum of one hundred dollars, conditioned that the libellant above named shall pay all such costs as shall be awarded against him by this court, or in case of appeal, by the appellate court.

"E. N. HINCKLEY,

"JAS. JACKSON.

"Taken and acknowledged this 10th
day of January, 1846, before me,

"GEORGE W. MORTON, *U. S. Commissioner.*"

"*Southern District of New York, ss.*—James Jackson, party to the above stipulation, being duly sworn, doth depose and say that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

"JAMES JACKSON.

"Sworn this 10th day of January,
1846, before me,

"GEORGE W. MORTON, *U. S. Commissioner.*"

§ 415. On filing the libel and the stipulation for costs, the process prayed for is issued by the clerk, as a matter of course, in most

cases, but in suits *in personam* no warrant of arrest of the person or property of the defendant shall issue, for a sum exceeding \$500, unless by the special order of the court, upon affidavit or other proper proof, showing the propriety thereof.*

§ 416. The order of the judge is endorsed on the libel in this form :—

“On filing the within libel, and otherwise complying with the rules of the court,—let a warrant of arrest issue in this cause against the defendant, (naming him,) and let him be held to bail in dollars. (Signed by the Judge.)

In the Southern District of New York, the defendant is held to bail, in cases under \$500, in \$100 more than the amount sworn to be due. In the cases ordered by the judge, he fixes the bail in his discretion.

Bail, however, can be taken by the marshal and the court, in those cases only, in which it is required by the laws of the state, where an arrest is made upon similar or analogous process issuing from the state courts.†

In all cases on filing the libel, the clerk issues the process and endorses on it the amount in which the marshal must take bail as follows :

“The Marshal will take bail in the sum of dollars.”

The libel being prepared, let it be signed and sworn to by the libellant, or, in case of his absence, by his agent or attorney, before the Judge, or the Clerk, or a United States Commissioner, and signed also by the Proctor and the Advocate.

If it be a case for security for costs, either prepare the stipulation, and have it executed, and acknowledged and justified; or let the surety go to the clerk's office, and execute one prepared there.

If the libel pray for an arrest, and the amount be over \$500, ap-

* Ad. Rule 7; Betts' Prac. 23, 28.

† Ad. Rule, 48.

ply to the Judge for an order that a warrant may issue. File the libel, and request the Clerk to issue the warrant, and if bail can be taken, to mark it for bail.

If the amount be not more than \$500, the warrant may issue without the order of the Judge inailable cases.

CHAPTER XXIII.

MESNE PROCESS.

§ 417. THE court is always open for the test and return of process, as has been stated; but the convenience of the court, as well as of the officers and suitors, has induced each court by its rules, to appoint certain general return days. In the Southern District of New York every Tuesday is a general return day. All admiralty mesne process is tested on the day it is issued and made returnable on the next general return day, at the usual hour for the opening of the court, unless a certain time be necessary to intervene between the test and return, in which case it is made returnable at the earliest return day which will include that time.¹

§ 418. The proper order and conduct of legal proceedings demands that the process of the court should be prepared with care and correctness, according to the rules and practice of the court, but in this matter, as in every other in admiralty, the ends of justice are the paramount consideration, and common law technicalities of process are unknown. Any error, mistake, or oversight will, therefore, be corrected by the court, on application, always on such terms as may be just, and as matter of course when the party has not been prejudiced. The issuing of the process being the act of the clerk, the party or his proctor is not responsible for its imperfections.²

§ 419. The process issues in the name of the President of the United States, is directed to the marshal of the district, is

¹ Act of Aug. 23, 1842, § 5; 5 Stat. at Large, 516.

² Jud. Act, of 1789, § 82; Betts' Prac. 24, 28.

tested in the name of the judge of the court, and must be under the seal of the court.³ It must be served by the marshal or his deputy, unless he be interested, in which case, the court, on application *ex parte*, showing the interest, will appoint a disinterested person, to whom the process will be directed, and by whom it will be served and returned.⁴

§ 420. The simple monition *in personam* is in the following form:

"THE PRESIDENT OF THE UNITED STATES OF AMERICA.

"*To the Marshal of the Southern District of New York,*

"GREETING:

"WHEREAS, a libel has been filed in the District Court of the United States of America, for the Southern District of New York, on the tenth day of January, in the year of our Lord one thousand eight hundred and forty-six, by Ebenezer N. Hinckley, against David L. Robinson. in a certain action, civil and maritime, for wages therein alleged to be due the said libellant, amounting to four hundred and ninety-eight dollars, and praying that a monition may issue against the said defendant pursuant to the rules and practice of this court.

"Now, therefore, we do hereby empower, and strictly charge and command you, the said marshal, that you cite and admonish the said defendant, if he shall be found in your district, that he be and appear before the said District Court, on the first Tuesday of February, instant, at eleven o'clock in the forenoon, at the City Hall in the City of New York, then and there to answer the said libel, and to make his allegations in that behalf, and have you then and there this writ, with your return thereon.

"Witness the Honorable Samuel R. Betts, judge of said court, this first day of February, in the year of our Lord one thousand eight hundred and forty-six, and of our Independence the seventieth.

"C. D. BETTS, *Clerk.*

"JOSEPH SMITH, *Proctor.*"

³ Act of 1789, Chap. 21, § 1, 1 Stat. at Large, 93.

⁴ Ad. Rule 1; Betts' Prac. 29; Jud. Act of 1789, § 27.

Take the process to the marshal, and give him information where the party or the property to be served may be found.

§ 421. If the process be a simple monition or summons to appear and answer to the suit, it is the duty of the marshal forthwith to serve it on the defendant, by delivering to him a copy thereof. It is a very useful measure of precaution, on the part of the marshal, to ask the defendant to sign on the back of the process his acknowledgment of the service; but if he omit to do so, the service will be good, and in either case the marshal returns the process to the clerk's office, with his return endorsed upon it, "*Personally served.*" (Signed by the marshal.)

§ 422. If the process be a simple warrant of arrest, it is the duty of the marshal immediately to arrest the person of the defendant, and keep him in custody, unless in a case in which the marshal may take bail, the defendant give bail, with sufficient sureties, by bond or stipulation, with condition that he will appear in the suit, and abide by all the orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein, in the court to which the process is returnable, or in any appellate court.*

It is the duty of the marshal to see that the sureties are sufficient, and that the stipulation is duly made and executed, inasmuch as the libellant is not consulted, and has no power to meddle with the duty of the marshal in the premises, who acts under the proper responsibility of his office.

The marshal returns the process to the clerk's office, with his true return endorsed upon it, and with the stipulation, if any, which he has taken.

§ 423. The following is the form of the stipulation :

* Ad. Rule 3; *ante*, § 416; *Lane v. Townsend*, Ware, 286; See the Forms of Warrants in the Appendix.

"DISTRICT COURT OF THE UNITED STATES OF AMERICA, FOR THE SOUTHERN DISTRICT OF NEW YORK.

"STIPULATION

"*Entered into pursuant to the Rules and Practice of the Court.*

"Whereas, a libel has been filed in the District Court of the United States of America, for the Southern District of New York, on the first day of June, 1849, by James Johnson, libellant, against William Pratt, defendant, in a certain action, civil and maritime, for pilotage, therein alleged to be due and owing to the said libellant, amounting to fifty-six dollars,—and Charles Jones, of the city of New York, ship chandler, surety, and the said defendant, parties hereto, consenting and agreeing that in case of default or contumacy on the part of the defendant, execution may issue against them, their goods, chattels and lands, for one hundred and fifty-six dollars,—

"Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the said defendant shall appear in the said suit before the said District Court of the United States of America, for the Southern District of New York, on the first Tuesday of June, instant, at 11 o'clock in the forenoon, at the City Hall, in the city of New York, and abide by all orders of the court, interlocutory or final, in the said cause, and pay the money awarded by the final decree rendered therein in the said court, or any appellate court.

"CHARLES JONES,

"WILLIAM PRATT.

"Taken and acknowledged,

June 3, 1849, before me,

"R. M. STILWELL, *U. S. Commissioner.*"

(Add affidavit of justification as in section 414.)

In the Southern District of New York, the marshal usually takes a penal bond under seal, instead of a stipulation. A stipulation is, however, more consistent with the course of admiralty practice.*

* Ad. Rule 3.

§ 424. Imprisonment on mesne process having been abolished in most of the states, and to the same extent in the courts of the United States, a question has been made in several cases, whether the power to arrest in admiralty be not abolished ; and it was held that the right to arrest still existed under the admiralty rules of the Supreme Court, if not under the general course of the admiralty practice, notwithstanding the Acts of February 28, 1839, and of January 14, 1841.¹

It may well be questioned, whether Congress, in prescribing for the courts of the United States the laws on the subject of imprisonment, passed by the respective states for the state courts, could, by a reasonable construction, be held to embrace the Admiralty Courts, which, by the constitution, cannot exist in the states. The whole course of the law on the subject of the Admiralty Courts, shows that Congress have always considered them and their practice as peculiar, and not subject to the same laws and principles as other courts, and, especially, have provided that their process should be "according to the principles, rules and usages, which belong to the Courts of Admiralty as contradistinguished from courts of law," at the same time that they provided that the state practice in common law cases should prevail in the courts of the United States,²—in the one case carefully insisting upon uniformity, and excluding the diversity of state practice, and in the other case, expressly prescribing that same diversity as a portion of the law of the United States. Indeed, it may well be asked, whether the peculiarities of maritime commerce, which have made courts of admiralty necessary, do not also make the power to arrest persons, as well as things, a necessary element of their usefulness. The characteristic difference between the business of the land and that of the water, is very striking. On the land, we contract with our neighbors, or those into whose character and responsibilities we can inquire,—who have property, families, friends, reputation among us, which makes them visible, tangible, and reliable; and we can decline to give credit, or deal for cash, or not at all, and we may,

¹ *Gaines v. Travis*, 8 N. Y. Legal Observer, 45; *Hodge v. Bemis*, 2 Law Rep. (new series,) 470.

² Process Act of 1789, § 2; *ante*, § 349.

with great propriety, be compelled to stand the hazard which we have voluntarily taken. But in maritime matters it is not so, but directly the reverse. We must deal with an impersonality, as it were, for the benefit and with the responsibility of whom it may concern. We cannot know with whom we deal, nor on whose responsibility we are ultimately to rely; we negotiate with transient persons,—we rely upon sea-rovers,—we cannot demand cash, nor refuse to give credit, nor decline to deal at all. Contracts are made for us by others in one place, to be performed by us with others in another. What would become of maritime commerce, if no charter party or bill of lading was made on credit!—if sailors, before signing the shipping articles, must be paid in full for the voyage!—instead of contracting “with whomsoever may go as master,” and whomsoever may be owners, as everywhere and always has been the policy of the law, must the seamen inquire out the owners, (no matter how far off,) and look into their affairs, or ask for an endorser! What security could there be for the merchant in shipping, or the consignee in receiving his goods, the pilot, the lighterman, the wharfinger, the sailor, the material-man, compelled to give credit, by public as well as private interests, and by the invincible necessities of maritime commerce, to transient persons, whose characters are unknown, whose residences are inaccessible, and who, on being sued without arrest, would find a substantial defence in a fair wind and an open sea.

It is however, by the Act of March 2, 1867, provided, that whenever, upon mesne process, or execution, issuing out of any of the courts of the United States, any defendant therein is arrested, or imprisoned, he shall be entitled to discharge from such arrest, or imprisonment, in the same manner as if he was so arrested or imprisoned, on like process of the state courts in the same district. And the same oath may be taken, and the same length of notice thereof shall be required, as is provided by such state laws; and all modifications, conditions, and restrictions upon imprisonment for debt, now existing by the laws of any state, shall be applicable to process issuing out of the courts of the United States therein, and the same course of proceedings shall be adopted as now are, or may be in the courts of such states. But all such proceed-

ings shall be had before some one of the commissioners appointed by the United States Circuit Court to take bail and affidavits.*

§ 425. If the warrant of arrest contain a clause, if the defendant cannot be found, to attach his goods and chattels to the amount sued for, or, if such goods and property cannot be found, to attach his credits and effects to the amount sued for, in the hands of the garnishee named in the process,—in such case, the process should direct that the garnishee upon whom the attachment is to be served, be summoned to appear and answer the interrogatories addressed to him in the libel.

There has been some question made as to the right to attach the property of a non-resident, under the 12th Section of the Judiciary Act of 1789, in the Southern and Eastern Districts of New York. The right has been sustained on the fullest consideration, in cases not yet reported.¹⁰

§ 426. Under such a process, it is the duty of the marshal to arrest the party, if he can be found in his district, and he has no right to attach goods, chattels, debts, credits, or effects, before he has endeavored to find the party himself. But inasmuch as the attachment of property will be immediately dissolved by the defendant's appearing and giving bail, the marshal should by no means, by devoting time to a fruitless search for the defendant, lose the opportunity of attaching his property. If, therefore, the party be not found at his usual place of business or abode, the marshal should proceed to make the attachment. He should attach the goods and chattels of the defendant, if they can be found, to the amount sued for; and if they cannot be found, then he should attach the debts, credits, and effects of the defendant, in the hands of the garnishee named in the process, to the amount sued for, and summon the garnishee to appear on the return day of the process, and answer according to the requisition of the process. The

* Act of March 2, 1867, 14 Stat. at Large, 543; *vide* Act of Feb. 28, 1839, 5 Stat. at Large, 321; Act of January 14, 1841, 5 Stat. at Large, 410.

¹⁰ *Vide* the Form in the Appendix; Betts' Prac. 30; Admiralty Rules 2, 3, 4; *Atkins v. The Fibre Disintegrating Co.* 1 Benedict, 118; *Cushing v. Laird, Jr.*, Blatchford, J. March, 1870.

garnishee may be summoned by serving upon him a copy of the warrant."

§ 427. If the goods and chattels of the defendant are attached, or if the garnishee have credits and effects in his hands, in either case, the defendant can always have the attachment dissolved by order of the court, on his appearing in the suit, and giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court. On such bail being given, the suit proceeds in the same manner, as if the defendant had been originally arrested, and there had been no attachment."

§ 428. The practice under the attachment clause in the warrant has been the subject of some uncertainty, and is of sufficient importance to justify a reference to the principles and authorities which have regulated it. In the case of *Smith v. Miln*,¹¹ garnishee, before Judge Betts, the libellant had proceeded to a personal execution against the garnishee, without any summons having been served on him. There had been only an attachment of credits alleged to be in his hands. On a motion to set aside the proceedings, the judge examined the subject fully, and the result of his inquiries cannot be better given than in his own language:

§ 429. "The jurisprudence of all civilized countries, seems to embody the means of rendering the effects of a debtor liable to the claims of his creditors; and, probably, no other tribunals than courts of common law, have found themselves incapacitated to effect that end by their own inherent powers, without having first brought the debtor, personally, under their authority. What then, in the English common law is an exception, limited to two small districts, is, in other systems, a common, pervading and familiar principle.

"The proceeding by way of foreign attachment, resting, in Eng-

¹¹ Ad. Rule 2, 4.

¹² *Smith v. Miln*, Abb. Ad. 373

land, only on the customs of London and Exeter, on the continent, in Scotland and the United States, takes its form from the high principle, that persons may be reached by justice through the medium of their property, both for the purpose of compelling their personal appearance and submission to the court, and also by sequestrating their property for the benefit of creditors.

"It is clearly demonstrated by the United States Supreme Court in *Manro v. Almeida*, (10 Wheat. 473,) that it is a well settled branch of admiralty powers, not derived from the customs of London, but coming to that jurisdiction from the same sources which furnish the other elements of its power. That case also supplies rules sufficiently explicit and full to direct the use and application of this particular power.

"The object in the case under consideration was, by means of a foreign attachment, to compel the appearance of Montgomery to the suit instituted against him. The court consider it a familiar and authorized method to do so, by force of the remedy by attachment, and point out, very perspicuously, under what circumstances and in what manner it is to be employed. (Id. 492, 493.)

§ 430. "The attachment may be of goods and chattels themselves, or of rights and credits, and, by actual arrest of the goods, or by notice to the person having either or both in his possession. (Conk. Ad. P. 478.) When the service is by notice, and not by actual levy on the goods, two things are necessarily implied: 1. That the garnishee be apprized of what the process demands and for what cause; and, 2. That he be warned of the time and place to appear before the court, and discharge himself of the effect of the citation, by showing that he holds nothing belonging to the debtor, or by specifying exactly what it is, and submitting himself, in respect thereto, to the authority of the court.

"The term *garnishee* means one warned or vouched in respect to the interest of third parties (F. N. B. 106); and *garnishment* is a warning (Jacob's L. Dict. Encycl. Amer. Foreign Attachment). Accordingly, under the custom of London, the garnishee must be warned not to pay the money to the debtor, and to appear and answer to the plaintiff's suit. (Bohun's Customs and Priv. of London, 256; Comyn's Dig. Attachment, A.) So he may,

it seems, plead to the general action and deny the indebtedness of the defendant. (Comyn's Dig. Attachment, E.) The same rule obtains in a trustee process. (6 Dane's Ab. ch. 192, art. 1.)

"The garnishee, under the English law, may appear by attorney, and plead that he has no property of the defendant in his hands, or confess it, or wage his law, or plead other special matter. (Bohun, 256.) The general issue is, whether the garnishee, at the time of the attachment, or at any time after, had any money or goods of the defendant in his hands. (Id. 255.) The plaintiff is thus put to prove that the garnishee had moneys in his hands; and if this proof is not made, a verdict will be rendered for him. (Id. 258.) When the proceeding is for the purpose of bringing the defendant into court, and he makes default on proclamation, a *scire facias* issues against the garnishee. (Comyn. For. Attachment, A.) On the appearance of the defendant, all proceedings against the garnishee cease. (Cro. El. 157, 593; Salk. 291.) And he must have notice of the foreign attachment, to bind him in the allotment of his effects to the debt. (Fisher v. Lane, 3 Wilson, 296.)

"In the states using the remedy of foreign attachment, its effect is principally regulated by statute; but in all cases the cardinal principle in the proceeding is, that the trustee or garnishee shall, by summons or *scire facias*, be brought into court, with notice of the claim upon him, and have a full opportunity to oppose the demand. (6 Dane's Ab. 492, ch. 192, arts. 1 to 8.) And see the practice in various states, stated and explained. (Graithle v. Wottagle et al. Pet. C. R. 345; Manken v. Chandler & Co. 2 Brockb. C. R. 125; Fisher v. Consequa, 2 Wash. C. R. 382; Franklin v. Ward, 3 Mason, 136; ibid. 247; Pickquet v. Swan, 4 Mason, 443; Barry v. Fayles, 1 Peters' R. 315; Brasheer v. West, 7 Peters, 621, and 2 U. S. Digest, Supplement, 884.)

§ 431. "Although the admiralty process of foreign attachment is not borrowed from that given by the custom of London, or the trustee processes in use in most of the states of the Union, yet, all being directed to a common object, and founded upon unity of principle, light is reflected from one upon the other, and we may accordingly recur to the practice of the law courts, serviceably, for

explications of the methods by which the common design is best effected.

"We will consider, however, more specifically, how the law and practice stand in the Court of Admiralty on this head.

"Clerke's Praxis, as appears by the preface to the edition in Latin, was compiled in the reign of Elizabeth, and became a standard authority long before it was published; and the scattered manuscripts were revised and arranged under the sanction of men of great eminence and experience in that branch of the law. It has always been accepted as the most authoritative exposition extant of the early course and usages in admiralty proceedings. (2 Brown Civ. & Ad. 396; 1 Atk. R. 296; 3 D. & E. 338.) Title 28 lays down the principle and furnishes the outline of the form of the warrant, applicable to foreign attachments used to compel the appearance of a defendant; and art. 32, in connection with art. 28, renders the direction full and explicit, beyond all ambiguity, that both the debtor and garnishee are to be cited to appear in court and answer the matter of claim.

§ 432. "These chapters or articles of Clerke were recognized in the South Carolina District Court in 1802 as sufficient authority for arresting property to compel the defendant's appearance, and although the form of the warrant in that case is not given, it is plainly to be implied that it conformed to the directions of Clerke. (Bee R. 186.) The rules of practice of this court, first compiled in 1828, and revised in 1838, provide, that if a party against whom a warrant of arrest issues, cannot be found, and return thereof be made, the plaintiff may have a warrant to attach the property of the defendant, and may also have inserted therein a clause of foreign attachment, according to the course of the admiralty. (Rule 25.)

"The same practice prevails in the First Circuit. (Dunlap's Ad. Pr. 139, 140.) The foreign attachment sued out here must be according to the course of the admiralty, and that has been amply shown to require notice or citation to the garnishee. The argument against this motion is, that by Rule 29 the garnishee was obliged, on the mere attachment of the goods of a debtor in his hands, to file his affidavit, giving a full statement of the property

in his hands, or pay it into court, and that such service was, accordingly, all the notice or warning necessary to give him.

"The rule will not justify that interpretation. It does not regulate the manner of making out or serving a foreign attachment. These are supposed to have been conformably to the course of the admiralty; and then it supplies a summary and cheap method by which the holder of the property may become discharged from the cause, and whereby, also, his creditor may be secured the control of the property attached.

§ 433. "Rules 2 and 37 of the Supreme Court, adopted since the decision in 10 Wheat. 473, specify concisely the steps the creditor and garnishee are respectively to take. The process is described by which a defendant may be arrested in suits *in personam*. (Rule 2.) The mesne process may be by a simple warrant of arrest of the person, in the nature of a *capias*, or by a simple monition, in the nature of a summons, to appear and answer to the suit, as may be prayed for in the libel; or the warrant for the arrest of the person may have a clause therein, that if he cannot be found, to attach his goods and chattels, or if such property cannot be found, to attach his credits and effects in the hands of the garnishees named therein.

"It is insisted, that the foreign attachment clause authorized by this rule, is not required to contain, also, a summons or notice to the garnishee to appear, and that accordingly no such citation need be made.

"The argument would equally prove, that it is not necessary to cite, or summon the defendant himself, for as he is absent, and cannot be arrested, if no citation is to be served on the holder of his property, the libellant would be allowed to seize the property and prosecute to a decree, without notification, to any person, of his acts.

"This, most manifestly, cannot be so, upon general principles; and Rule 37, instead of favoring that conclusion, in my judgment, most clearly implies, that the garnishee is before the court in the ordinary way of bringing in such party. It provides, that, in cases of foreign attachment, the garnishee shall be required to answer on oath, as to the debts and effects in his hands, and to such interroga-

tories as may be propounded by the libellant; and if he refuse or neglect to do so, the court may award compulsory process, *in personam*, against him.

"A party is not placed in a predicament subjecting him to attachment, but in disobeying or counteracting some process or mandate of court; and this regulation imports, that he has been put within the jurisdiction of the cause and the court by service of process on him."

On default of one summoned as garnishee, the libellant is not entitled, under Rule 37, to compulsory process *in personam* against him. Such process issues only to compel an answer. But after default, the garnishee cannot put in an answer, as a matter of right, except to state facts which have occurred since the default. And if the libellant can satisfy the court, by affidavits, that the garnishee has debts, effects, or credits in his hands, he may have execution against them, without any answer being given."

§ 434. If the suit be *in rem*, it is, in substance, a suit against all persons having any interest in the thing, to the extent of their interest in it. All the world are said to be parties to such a suit, and are bound by the decree, so far as the property proceeded against is concerned, and may intervene and make themselves actual and nominal parties to it, and bring their rights before the court.¹³ The process issued is a warrant to arrest the property, and usually contains, also, a monition to all persons interested, to appear on a day certain, and show cause why the property should not be condemned, to satisfy the demand of the libellant. On such a process, it is the duty of the marshal to arrest the property described in the writ, and safely keep it, subject to the order and decree of the court. In the case of a vessel, the warrant extends to sails and rigging taken ashore, as well as to the vessel,—and also, to give public notice of the arrest, and of the time assigned for the return of the process and the hearing of the cause. This must be given in such newspaper in the district as the District Court shall order. And if there be no newspaper published therein, then in such other public

¹³ *McDonald v. Rennel*, 11 Law Rep. N. S. 157; *Shorey v. Rennell*, *Sprague*, 418.

¹⁴ *Ante*, §§ 364, 365.

places in the district as the court shall direct. On the return day of the process, he must return the same into court, with his return endorsed thereon, stating what he has done under the writ. He has no right, on the arrest of property *in rem*, to take any bail for the property, but he must retain it specifically, and is responsible for its proper custody. For the purpose of detention and security, the marshal may, if necessary, take off the sails of a vessel, or her rudder, or anchors, so that she cannot escape.¹⁵

If there be several parties having demands against the thing, each party brings his separate action and issues his process, which it is the duty of the marshal to serve and return as though it were the only process, and it is for the court, upon the hearing, to determine the order in which the parties are to be paid.¹⁶

§ 435. In cases of seizure, under the revenue laws, the court must cause fourteen days' notice to be given of the seizure and libel, by causing the substance of the libel with the order of the court therein, setting forth the time and place appointed for trial, to be inserted in some newspaper published near the place of seizure; and also, by posting up the same in the most public manner, for the space of fourteen days, at or near the place of trial.

In analogy with this statute provision, it is the practice in the Southern District of New York to require the marshal to make the same publication and action in all civil cases *in rem* between party and party, unless the court shall for sufficient cause order a shorter publication.¹⁷

§ 436. The usual attachment and monition *in rem* is in the following form :

¹⁵ *Ante*, § § 364, 365; *Lane v. Townsend*, Ware, 296; *The Alexander*, 1 Doda, 282; *The Dundee*, 1 Hag. Ad. R. 124; Act of May 8, 1792, § 4; Conk. Treat. 2d ed. 120; Ad. Rule 9; Act of March 2, 1799, § 69; *Ex parte, Jesse Hoyt*, 13 Pet. 279; Sea Laws, 445; *Boyd Proc.* 17; *Jennings v. Carson*, 4 Cranch, 2; *vide Taylor v. Carryl*, 20 How. 583; *The Gazelle*, Sprague, 378; *The Julia Ann*, id. 382.

¹⁶ *Post*, § 560; *The Globe*, 2 Blatchf. C. C. R. 427; *vide The Adele*, 1 Benedict, 308.

¹⁷ Ad. Rule 9; Act of March 2, 1799, § 59; Conk. Treat. 2d ed. 361.

"Southern District of New York, ss.

"THE PRESIDENT OF THE UNITED STATES OF AMERICA,

"To the Marshal of the Southern District of New York,

GREETING:

"WHEREAS, a libel has been filed in the District Court of the United States, for the Southern District of New York, on [L. s.] the first day of June, in the year of our Lord, one thousand eight hundred and forty-nine, by William Robinson against the Bark Richard Alsop, whereof George Johnson is or lately was master, her tackle, apparel, and furniture, in a cause of contract, civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and due proceedings being had, that the said vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

"You are hereby commanded, to attach the said bark or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the Southern District of New York, on the third Tuesday of June, instant, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you, then and there, make return thereof, together with this writ.

"Witness, the Honorable Samuel R. Betts, Judge of the said court, at the city of New York, this first day of June, in the year

of our Lord one thousand eight hundred and forty-nine, and of our Independence the seventy-third.

“JAS. W. METCALF, *Clerk*.

“W. R. BEEBE, *Proctor for libellant*.”

§ 437. The return of the marshal should be endorsed on the writ in the following form:

“In obedience to the within attachment and monition, I attached the property therein described, on the second day of June, instant, and have given due notice to all persons claiming the same, that this court will, on the third Tuesday of June, instant, (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

“HENRY F. TALMADGE, *U. S. Marshal*.

“Dated June 17th, 1849.”

§ 438. The proceeding *in rem* is predicated on the assumption that the owner and other persons interested in property have it in their own charge, or have placed it under the control of others, who will see that their interests will be protected, whenever any process shall be served upon it. The process commands the marshal to notify all parties,—it is his duty, therefore, to make the service openly,—to leave a written notice with the person in possession, and to exercise his acts of custody and control, in such open and visible manner, by a keeper, or otherwise, that the persons having the same in charge may take the necessary steps to protect the rights of all those interested.¹⁸

§ 439. Process *in rem* is founded on a right in the thing, and the object of the process is to obtain the thing itself, or a satisfaction out of it, for some claim resting on a real or a quasi proprietary right in it. The court arrests the thing for the purposes of satisfaction. It holds its possession by its officers, and

¹⁸ *Ante*, §§ 364, 365; Betts' *Prac.* 83.

the property in contemplation of law is in the custody of the court itself. As the court has the legal possession for the purposes of justice, and to that extent is clothed with the sovereignty of the country, it has, of course, the power to defend and protect its possession, and to resume it, if it should be, by any means, divested. If, therefore, the thing be taken out of the possession of the officer, by a party to the suit or by a stranger, the court, on motion, will compel such person, by attachment, or other summary process, to re-deliver it. And if a purchaser obtain possession without paying the price, he may, in like manner, be compelled to pay the purchase money, or re-deliver the property to the officer."

§ 440. In all suits *in rem* against a ship, her tackle, sails apparel, furniture, boats, and other appurtenances, if such tackle, apparel, sails, furniture, boats, or other appurtenances, are in the possession, or custody of any third person, the court may, after a due monition, or notice to such third person and on hearing the cause, if any, why the same should not be delivered, award and decree that the same be delivered into the custody of the marshal, or other proper officer, if, upon the hearing, the same is required by law and justice. The rule of the Supreme Court mentions only the case of a ship, but the principle is one of general application, and under like circumstances, when a principal object is arrested, and some of its appurtenances are withheld from the marshal by a third person, the court would, in the manner pointed out in the rule, compel its delivery to the marshal. The proceeding can work no injustice, for such third person can immediately intervene in the suit, for his interest in the things so taken from him."

§ 441. In cases of proceedings *in rem*, where freight or other proceeds of property are attached, or are bound by the suit, (as is often the case in suits for seamen's wages, bottomry, or

¹⁹ The U. S. v. The La Jeune Eugenie, 2 Mason, 409; The Phebe, Ware, 362.

²⁰ The Dundee, 1 Hag. Ad. R. 124; The Alexander, 1 Dod, 282; Ad. Rule 8.

salvage,) and such freight, or other proceeds are in the hands or possession of any person, the court, upon application, by petition, of the party interested, may require the party charged with the possession thereof, to appear and show cause why the same should not be brought into court, to answer the exigency of the suit, and if no sufficient cause be shown, the court may order the same to be brought into court to answer the exigency of the suit, and upon failure of the party to comply with the order, may award an attachment, or other compulsory process, to compel obedience thereto."

Draw a petition, stating briefly the facts,—let it be sworn to before a United States Commissioner or notary,—serve copy and notice of presenting the same, with time and place, on the party holding the property. For the precedents, see the Index.

§ 442. It is also the duty of the marshal to keep the property seized, in such safe and secure manner as to protect it from injury while in his custody; so that if it be condemned, or be restored to the owner, its value to the parties may be unimpaired, and the marshal himself be not responsible for unnecessary deterioration or damage.

§ 443. If the suit be both *in rem* and *in personam*, there may be separate processes at different periods, or one process may combine the usual process *in personam* with the process *in rem*, in which case the marshal executes it in the same manner as he would do the two if they were separate, and he makes on the united process a return of all that he has done in pursuance of the writ.

²¹ Ad. Rule 38; *Lane v. Townsend*, Ware, 296; *Greenhill v. Greenhill*, 1 Curtis, 466.

CHAPTER XXIV.

INTERLOCUTORY SALE OR DELIVERY OF PROPERTY.

§ 444. If the property be in its nature perishable, or is liable to deterioration, decay, or injury, by being detained in custody pending the suit, the court may, on the application of either party, in its discretion, order the same, or so much thereof as shall be perishable, or liable to deterioration, decay, or injury, to be sold, and the proceeds thereof, or so much thereof as shall be a full security to satisfy the decree, to be brought into court, to abide the event of the suit. Instead of a sale the court may, on the application of the claimant, order an appraisement of the property to be made, and order the same to be delivered to the claimant, on his depositing in court so much money as the court shall direct, or the court may order it to be delivered to him on his giving a stipulation, with sureties, in such sum as the court shall direct, to pay the money awarded, and abide by the final decree rendered by the court, or the appellate court, if any appeal be taken. These orders for sale, or delivery on bail, may be made at any time, as well in vacation as in term.¹ In such cases, the money deposited, the stipulation, or the proceeds of the sale, are a substitute for the thing itself, and to them the court resorts for satisfaction of the decree.²

§ 445. The 89th section of the Collection Act of 1799, pro-

¹ Ad. Rule 10; Conk. Treat. 2d edit. 363; Collection Act, 1799, § 89; The Alligator, 1 Gal. 148; The Struggle, id. 476; Act of April 5, 1843; *post*, § 448.

The American Admiralty acts by a simple order of the court in interlocutory directions, where the British Admiralty sometimes acts by warrants, commissions, and monitions. Coote Prac. 16, 18.

² Jennings v. Carson, 4 Cranch, 25, 26; The Nathaniel Hooper, 3 Sum. 542, 562; The Cheshire, Blatchf. Pr. Cas. 165.

vides, that in cases of seizure, upon the prayer of any claimant of the seized property, or any part thereof, that the same may be delivered to him, it shall be lawful for the court to appoint three proper persons to appraise the property, who shall be sworn in open court for the faithful discharge of their duty; and such appraisement shall be made at the expense of the party on whose prayer it is granted; and on the return of such appraisement, the claimant, with one or more sureties, may give a bond for the appraised value; and the court, on being furnished with the certificate of the collector of the district that the duties are paid, may order the property to be delivered to the claimant and the bond to be filed, and if the goods are acquitted, the bond shall be cancelled; but if judgment shall pass against the claimant for the whole or any part of the property, and the claimant shall not, within twenty days thereafter, pay into court, or to the proper officer thereof, the appraised value of the property condemned, with costs, judgment shall be granted on the bond on motion in open court, without further delay. The same practice has been pursued in cases between individuals. Indeed, the statute was but an adaptation of the admiralty practice to seizure cases, probably caused by a doubt springing out of the analogy between cases of seizure and those of prize, in which latter cases property is never delivered on bail, before decree, except by consent. The appraisers are sworn "faithfully and justly to appraise the property according to the true value thereof, and the best of their skill and judgment."³

§ 446. Without adverting to the well settled principle, that the Court of Admiralty is always open, and that all proceedings in causes are entered as taking place in open court, it was supposed that a further act was necessary, and accordingly the act of April 5, 1832, was passed, providing, that such proceedings, in all cases, may take place as well in vacation as in term, and that the bail may be taken by the clerk, on the parties producing the certificate

³ Coote Prac. 38.

of the collector of the sufficiency of the sureties, — the collector and district attorney being reasonably notified in cases of the United States, and the party or counsel in all other cases.

The learned judge of the Northern District of New York has expressed a doubt whether an admiralty stipulation without seal would be a compliance with the act, which uses only the word *bond*; and whether the appraisers can be sworn before the clerk in vacation, in seizure cases. All the principles of admiralty practice, and its rules of construction, seem to me to concur in removing such doubt. A stipulation is a bond. It is that by which the party is bound.

The length of notice, mode of service, and other such details, can be regulated only by the judge of each district, according to the circumstances of the district.*

§ 447. If a ship or vessel be arrested, the same may, upon the application of the claimant, be delivered to him, upon an appraisal under the direction of the court, upon his depositing in court so much money as the court shall order; or upon his giving a stipulation with sureties, as in the case of perishable goods; and the stipulation or money thereafter becomes a substitute for the thing itself. When a vessel is delivered on bail, the owner takes her *cum onere*. She still remains in his hands, liable to all the liens legally attaching on her. If, however, it becomes necessary for the purposes of justice, the vessel may be re-arrested.*

The object of these various provisions is to enable parties to save themselves from those indirect consequences of litigation *in rem*, which are often destructive of the thing itself, and deeply injurious to the party, without any benefit whatever to the cause of justice, or to the proceedings in court; and, therefore, if the claimant decline to make any such reasonable application to meliorate the evils of delay, and allows the ship to lie in the custody of the

* Conk. Treat. 2d ed. 366; *The Alligator*, 1 Gal. 148; *The Struggle*, id. 476; *The U. S. v. Four part pieces of Woollen Cloth*, 1 Paine, 435; *Nelson v. The U. S.* 1. Pet. C. C. R. 235; *Lane v. Townsend, Ware*, 296.

* *The Gran Para*, 10 Wheat. 497.

marshall the court may, in its discretion, on the application of either party, upon due cause shown, order a sale of the ship, and direct the proceeds to be brought into court, or otherwise disposed of, as it may deem most for the benefit of all concerned.*

§ 448. These applications for interlocutory or provisional relief, may be made at any time after the commencement of the suit, and before the decree, and as often, and whenever the circumstances may require such relief, at chambers as well as in open court, in vacation as well as in term. It should, however, be observed, that no person is allowed to make an application to the court, in relation to the proceedings, unless he first by a claim, or some stipulation, or other regular proceeding, acquire an acknowledged legal relation to the cause. In the matter of the sale or delivery of property, mutual convenience, and the desire to save expense, induces the parties usually to consent to the proper order. If consent will not be given, application must be made to the court.

Draw Claim,— have it sworn to before a United States judge, clerk, commissioner, or a notary, and file it. Give stipulation for costs.

Make an affidavit of the circumstances. Let it be sworn to as above. Serve copy, with notice of motion, on the opposite party. Get admission, or make proof of service, and make motion in open court or at chambers.

For the precedents, see the index.

* Conk. Treat. 2d ed. 863; Lane v. Townsend, Ware, 296; Ad. Rule 11; The Sally, 8 C. Rob. 148; The Langdon Cheves, 2 Mason, 57.

CHAPTER XXV.

RETURN OF PROCESS — DEFAULT — APPEARANCE.

§ 449. AT the opening of the court, on the return day of the process, the marshal returns the process to the clerk, and the judge directs the defendant to be called. The proctor of the libellant should always be in court on the return day. The old practice of calling the defendant on three several days, and entering three several defaults if he did not appear, and practically not requiring him to appear till on the third day, has become, in modern times, an empty form, producing nothing but expense and delay, and, in the American courts, has fallen into disuse. The crier now, by order of the judge, if the suit be *in personam*, calls the defendant and if he does not appear in person or by proctor, the court, on motion of the libellant's proctor, pronounces him in contumacy and default, and adjudges the libel to be taken *pro confesso* against him, and proceeds to hear the cause *ex parte*, and to decree therein as to law and justice may appertain. This *ex parte* hearing may take place at the time of the default, or on any future day in court, as the court may direct. The more usual course, when the libel is taken *pro confesso*, is to refer the matter to a commissioner, to hear the parties and make report thereon to the court.¹

The following is the form of the order :

"The process in this cause being returned personally served, the defendant is duly called, and does not appear; and on motion of _____, proctor for the libellant, the said defendant is pronounced to be in contumacy and default, and the libel is adjudged to be taken, *pro confesso*, against him, and is referred to _____, a commissioner, to ascertain the amount due

¹ Ad. Rule 29; Collection Act of 1799, § 29; Conk. Treat. 2d ed. 362; Ad. Rule 44; Betts' Prac. 35.

to the libellant, and to report the same to the court, with all convenient speed."

§ 450. After a decree of contumacy and default, the defendant, at any time before the final hearing and decree, may apply to the court to set aside the default, and allow him to come in, appear, and answer the libel, and the court may, in its discretion, permit him to do so, and may impose such terms as to costs as may be just, even to the payment of all the costs of the suit, up to the time of the application. The phraseology of the admiralty rule of the Supreme Court has been said to require the payment of the whole costs, as a condition of relief, but so strict and hard a construction, in a court so liberal and equitable as the admiralty, would not be adopted, unless a three-fold necessity should require it, and no violence is done to the language by giving the phrase, "the court may, in its discretion," its proper application to all that follows it, in the rule. Such applications to the favor or discretion of the court, must be founded on affidavit or other evidence of the grounds of the application.*

§ 451. In the same manner, in the discretion of the court, on motion of the defendant, and on payment of such costs, and complying with such orders and terms in the premises, as the court may direct, a final decree in contumacy and default may be rescinded, and the party allowed to appear, and a re-hearing granted at any time within ten days after the decree has been entered.*

Draw the affidavit of the facts, — serve copy on the proctor of the opposite party, with such notice of making the application as is required by the rules of the court.

§ 452. If the suit be *in rem*, on motion of the libellant's proctor, proclamation is made by the crier for all persons having anything to say why the property should not be condemned and sold to answer the prayer of the libellant, to come forward and make their

* Ad. Rule 29.

* Ad. Rule 40; The Monarch, 1 W. Rob. 21; Conk. Treat. 2d ed. 394.

allegations in that behalf. If no one appears, on like motion, the defaults of all persons are entered, a decree of condemnation and sale is made, on a brief statement by the proctor, of the cause of action, and the suit proceeds *ex parte* to a final hearing and decree, then, or at a future day; or the court may refer the matter to a commissioner to ascertain the amount and report it to the court.⁴

The following is the order:

"The marshal having returned that he has duly attached the brig Sea-Bird, her tackle, apparel, and furniture, and given due notice to all persons claiming the same, that this court will, on this day, proceed to the trial and condemnation thereof, should no claim be interposed for the same, on motion of proctor of the libellant, proclamation is made for all persons having anything to say why the same should not be condemned and sold, to answer the prayer of the libellant to appear, and no person appearing, on like motion it is ordered, that the defaults of all persons be entered, and that the said brig, her tackle, &c., be condemned and sold to answer the prayer of the libellant, and that a *venditioni exponas* issue accordingly; and, on like motion, it is further ordered, that it be referred to _____, a commissioner, to ascertain the amount due to the libellant, and to report the same to the court with all convenient speed."

§ 452. *a.* If there be several defendants, or several things proceeded against in the same suit, and there be a decree by default against some, and an appearance by others, the default of one, though it be absolute, and lead to final judgment and execution against such party or parties, does not prejudice those who have appeared, and they are at liberty to controvert facts, which, as to all others may be *res judicata* by force of the default and final decree.⁵

§ 453. It is not usual for the court to refer to a commissioner matters of tort or uncertain damages, or mere questions of law, where the judgment and discretion of the court itself would be better informed by the actual hearing of the controversy, but there

⁴ Betts' Prac. 36; Ad. Rule 44.

⁵ The Mary, 9 Cranch, 142-3.

is no legal objection to making a reference in such cases, and it is sometimes done.

Commissioners, in matters referred to them, have all the usual powers of Masters in Chancery, in cases of reference, and may administer oaths, and examine parties and witnesses in proper cases.⁶

The acts of Congress having provided for the appointment of commissioners to perform various semi-judicial duties, it is usual to make the references to them, as persons experienced in such matters, but there is no legal objection to referring a matter to one or more commissioners chosen by the parties, or appointed by the court, for the particular case alone.⁷

§ 454. In cases of seizure, when no one appears, the decree of condemnation is absolute, — the only question being whether the property be forfeited or not. In such cases, it is usual for the district attorney, on his motion for condemnation, to state briefly the substance of the libel and the cause of forfeiture.

§ 455. On the return day of the process, or at any other time, when, by the course and order of the court, it is the duty of the libellant to take any step in the cause, and he neglects to do so, the defendant appearing, the court may, on his motion, order the libellant to be called; and if he do not appear, may, on like motion, decree him to be in default and contumacy, and pronounce the suit to be deserted, and the same may be dismissed with costs.⁸ The admiralty rules of the Supreme Court do not, as in case of the default of the defendant, say anything of the power of the court to set aside the default. There cannot be any question, however, of the power of the court, on application in proper time, to set aside any default for not complying with the rules or orders of the court. There might be doubts of the power to set aside a regular final decree on the merits, although taken by default, and hence the propriety of the twenty-ninth and fortieth rules.

The following is the form of the order:

⁶ Betts' Prac. 37; Ad. Rule 44.

⁷ Ad. Rule 44.

⁸ Ad. Rule 39; *ante*, §§ 450, 451.

"The libellant having failed to appear in this cause and prosecute his suit according to the course and order of the court, on motion of _____, proctor for the defendant, this suit is pronounced to be deserted, and the libel is dismissed with costs."

§ 456. If the libellant appear on the return of the process, and move the usual proclamation, the defendant must then appear, put in his answer to the libel, if *in personam*, and his claim and answer if *in rem*, or on motion obtain from the court such further time as may be necessary.

In suits *in personam*, the defendant is often arrested but a short period before the return of the process, and it is, almost, of course, therefore, to allow him time to procure a copy of the libel, examine his defence, and prepare his answer. In cases of real defence, the court gives ample time, and the practice in admiralty is such, that proctors are rarely found to oppose the granting of all necessary indulgence.

It is not usual, in the Southern District of New York, for the proctor to give any written notice of his appearance. In the presence of the court, the defendant's proctor states *viva voce*, that he appears for the defendant, and files his answer or asks for time to do so. The more orderly practice, however, would be, to require the proctor for the defendant to furnish to the clerk, to be filed, a written notice that he appears for the defendants, one or more of them, — that the files and minutes of the court may always show who is the responsible representative of the defendant. A general rule of the Supreme Court prescribing such notice is desirable.*

The following is the form of the notice :

* Ad. Rule 29.

DISTRICT COURT — IN ADMIRALTY.

WILLIAM PRATT, }
 vs. }
 JOHN JONES, and others. }

Sir,— You will please to enter my appearance as proctor for the defendants, (or claimants), in this cause.

June 2d, 1849.

To J. W. M., Esq., *Clerk.*

A. B., *Proctor.*

§ 457. In cases *in rem*, the process must usually be served fourteen days before the return day, and in many cases more, and there is not, so often, a necessity for further time to answer. If, however, there be any such necessity, the time is extended by the court, and it is usual, in such cases, to connect with the order allowing further time for appearance, an order that the defendant be in contumacy and default, unless his answer be put in within such further time. Further time to answer the libel is practically an extension of the return day of the process; and on the further day, the defendant may take any course which he might have done on the actual return day of the process, had he been then ready.

Make out and serve, on the clerk and the libellant's proctor, a notice of appearance, and make out your claim, answer or exception,—have it properly verified, and file it, with the proper stipulation, on or before the return of the process, or, at that time, attend court and move for further time.

§ 458. It is a general rule that appearance waives any objection, so far as respects the mere formality of the previous proceedings. But this only refers to the more full and deliberate intervening, which is effected only by signing the necessary stipulations and putting in the necessary answer. If, therefore, there be any question of formality to be brought before the court, it should be done before perfecting the appearance. By the ancient practice, proctors were required to exhibit a proxy or instrument of appointment by the clients, but this strictness is now entirely obsolete. By the modern practice, for a period of at least two hundred years past, proxies have been dispensed with, and a proctor is at liberty to

commence or defend a suit on his own responsibility, without the production of any proxy. He is bound, however, to produce his parties before the court, when called on to do so; and is expected to be duly authorized to appear by the party for whom he intervenes. The court has a right to call upon the proctor, at any period of the cause, to state not generally, but specifically by name, the whole of the parties for whom he is authorized to appear.¹⁰

§ 459. *Garnishee*.—The garnishee, or party holding the property attached, being served with the citation or monition, must appear in person, or by proctor, on the return day of the monition, and answer in writing, on oath, as to the property, goods, chattels, credits, and effects, of the defendant in his hands, and to such interrogatories touching the same, as may be propounded by the libellant. These interrogatories may be annexed to the libel, or put in separately, after the garnishee has appeared, and the answer must be filed in the cause.

If the party refuse or neglect to answer, the court may award compulsory process against him *in personam*.

If he admit any debts, credits, or effects, the same must be held in his hands, liable to answer the exigencies of the suit; and he will be held personally responsible for the demand of the libellant, as decreed by the court, to the extent of what he has in his hands.

If the garnishee deny having debts, credits, or effects, in his hands, the question will be tried by the court like any other issue.¹¹

If the property of a third person be attached, he may intervene by claim, for the protection of his property.

§ 460. In the original suit, when the defendant has not been served personally, but his property or credits have been attached to compel an appearance, on the return of the warrant, the defendant

¹⁰ *Prankard v. Deacle*, 1 Hag. Ecc. R. 185; *Clerke Praxis*, 13, 15; *The Whillemine*, 1 W. Rob. 337, 340; S. C. 2 Notes of Cases, 20; *The New Draper*, 4 C. Rob. 290; *Bette's Prac.* 36, 47.

¹¹ *Ad. Rule*, 37; *vide precedents in the Appendix*; *Hall Ad.* 70-78; *ante*, § 425-434.

is called, in the same manner as if he had been sued personally, and not appearing, he is pronounced in contumacy and default, and the matter of the libel taken *pro confesso* against him, and the amount ascertained, and the decree perfected, in the same manner as in other cases. And execution may issue against his person and property generally, and especially against his property, credits, and effects in the hands of the garnishee; and if the garnishee refuse to deliver or apply the same to the execution, then against the person and property of the garnishee, to the amount of the execution, or of the property, credits, and effects in his hands."

No person is allowed to intervene in a suit or proceeding *in rem*, unless he gives a stipulation with sureties, to abide by the final decree rendered in the cause, and to pay all such costs, expenses, and damages as shall be awarded by the court, upon the final decree, whether it is rendered in the original or appellate court. In practice, it is usual to defer putting in the stipulation till the time of filing the claim, answer, or allegation; but in strictness no party is allowed to make delay or expense to the libellant, till he shall have given the necessary security. The appearance of the party is not perfected, — he is not considered fully in court, till he has put in his claim, or answer and stipulations."

¹² Ad. Rule, 34; *Lane v. Townsend*, Ware, 296; *Betts' Prac.* 41-45, 49, 50; *Clerke Prax.* tit. 38; *Hall Ad.* 78.

¹³ *Hall Ad.* 70-77; *ante*, § 426; *vide* precedents in the Appendix.

CHAPTER XXVI.

THE PLEADINGS AFTER THE LIBEL.

§ 461. THE pleadings on the part of the defendant are, the claim — the exception — the answer.

Claim.— The claim is confined to proceedings *in rem*, in which alone can there be any occasion to make a claim of property. It is a statement in proper form, of the rights of the party making it to the property attached by the process of the court. It has been before remarked, that all parties having an interest in the property attached in a suit *in rem*, will be bound by the decree, and, of course, are entitled to come in and make themselves parties to the suit, to defend their interest. Persons having liens upon the property thus intervene, a maritime lien being a sort of proprietary interest. All parties who thus intervene are bound, in the first place, to make their claim to the property, — in other words, to state their interest in it, that the court and the libellant may know whether, and to what extent, they have a right to defend the suit; for it is quite as important to the cause of justice, that the libellant's rights should not be impaired by the unauthorized meddling of those who have no interest, as that the defendant's rights should not be impaired by his not being allowed to defend it in his own name. The claim is nothing but the statement of the party's right in the property, and its sole purpose is to show his right to appear and defend the suit and represent the property.¹

No set form of words is necessary to form a claim. In this, as in other pleading, the court looks to the substance rather than the form. It must state that the party is the true and *bona fide* owner

¹ Ad. Rule 26; *The Mary Anne*, Ware, 104, 107; *Betts' Prac.* 56, 57; *Clerke Prax.* tit. 3; *Hall Ad.* 78; *The U. S. v. The La Jeune Eugenie*, 2 *Mason*, 409.

of the interest which he represents, and that no other person is the owner thereof. It must be verified by the oath of the party, or his agent or consignee. When it is verified by the oath of an agent or consignee, he must also swear that he is authorized to do so by the owner, or if the property be at the time of arrest in the possession of the master of a ship that he is the lawful bailee thereof for the owner. As the putting in a claim and defending a suit may put the libellant to great expense, — unnecessary and unjust if the claimant have no right, — he must file a stipulation at the time of putting in his claim, with sureties, in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or, upon appeal, by the appellate court. In the Southern District of New York the stipulation for costs is in \$250. It may be increased by the court, if necessary, on motion.*

§ 462. The following is the form of a claim :

“To the Honorable Samuel R. Betts, Judge of the District Court of the United States, for the Southern District of New York :

“David Rome and William B. King, of Eastport, in the County of Washington, State of Maine, owners of the schooner *Hornet*, her tackle, apparel, and furniture, intervening for their interest in the said schooner *Hornet*, her tackle, apparel, and furniture, appear before this Honorable Court, and claim the said schooner, her tackle, apparel, and furniture, and state that they are the true and *bona fide* owners thereof, and that no other person is the owner thereof.

“And thereupon, the said claimants pray, that this Honorable Court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

“DAVID ROME.

“WILLIAM B. KING.

“Sworn, July 10, 1847, before me,

“GEORGE W. MORTON, *U. S. Commissioner*.”

W. R. BEEBE, *Proctor*.

* Ad. Rule, 26; *Jenks v. Lewis*, Ware, 52; *Betts' Prac.* 56, 57.

This claim may be put in immediately, without waiting for the return of the process.*

§ 463. Claimants of separate interests may appear separately, and put in separate claims. The owners of the respective shares of the ship, — the owners of the respective portions of the cargo, — the government, for its duties, or for a forfeiture, — the underwriters, when they have reason to believe that the property has been, or may be abandoned to them, — a mortgagee in possession, when the suit affects his lien upon the vessel, — the consul of a foreign nation, if he have reason to believe that the citizens or subjects of his nation are interested, — in short, any person or officer will be allowed to appear and make his claim (first giving security for costs), whenever, in the opinion of the court, excluding him may lead to a failure of justice. Persons or officers, however, who appear by virtue of some general right, will not be allowed to receive the property or money awarded by the decree, unless the right of the principal party to receive it, and the right of the agent to represent him be proved to the court.†

§ 464. If there be several libels against the same vessel or property, the claimant must put in his claim in each suit, and the libellants in each suit should also put in their claim in all the other suits, lest a decree of condemnation and sale by default, in one suit, should dispose of the property, without the power of redress. In proper cases, causes may be consolidated.*

§ 465. The merely putting in a claim is not a defence to the libellant's demand. The property may belong to the claimant, and

* Ad. Rule, 26.

† Dunlap, Prac. 88; *The Bello Corrunes*, 6 Wheat. 152; *The Antelope*, 10 id. 66; *The London Packet*, 1 Mason, 14; *ante*, § 325; *The Mary Anne*, Ware, 104; Hinchliffe's Prac. 10; *The Vrouw Judith*, 1 Rob. 127-129; *The Kinders Kinder*, 2 id. 88; *The Fortune*, id. 92; *The Rising Sun*, id. 104; *Thomas v. The Kosciusko*, 11 N. Y. Leg. Obs. 38; *The Monticello v. Mollison*, 17 How. 156; *The Jenny Lind*, 3 Blatchf. 513; *Robson v. The Huntress*, 2 Wall. Jr. C. C. 59; *Matter of Stover*, 1 Curt. C. C. 201. For precedents in the appendix, *vide* Index.

* *Vide post*, § 551.

still the libellant have full title to the relief sought, — indeed, his right to that relief often depends upon the claimant's being the owner of the property. After the claim is in, and the claimant is thus entitled to be heard for his interest, he must put before the court the grounds of his defence, in suitable allegations, that the court, as well as the opposite party, may be informed of the grounds of defence. These may be put forward in a separate defensive allegation, or they may be united with the answer, if one be required. If the libel does not pray for an answer, the defendant need not put in an answer, properly so called; that is to say, he is not compelled to answer the facts set forth in the libel. But whatever may be the prayer of the libel, any party defending the suit must spread before the court the grounds of his defence, or he will be debarred from making his defence, — it being a primary rule in admiralty, that the cause must be heard and decided according to the allegations, as well as the proofs in the cause.*

§ 466. *Exceptions.*—If any pleading or proceeding be irregular, insufficient, or objectionable, the proper mode of bringing before the court the objection, is by exceptions or exceptive allegations, — which in their purpose and effect correspond with special demurrers and pleas in bar at common law, and they are properly classed with pleadings. Thus, if the libel, — the answer, — the replication, — the interrogatories, or the answers to them, — the report of the clerk, or commissioner, auditor, or assessor, to whom any matter is referred, — be liable to just objection, it may be excepted to, — and if not excepted to, the court will be slow to listen to any objections to its form or substance. The court is indulgent in regard to all matters of mere form, and does not encourage severe and captious objections.†

In mere matters of form, exceptions should be made before answering in chief, or at the same time, or they will be considered as waived.‡

* Ad. Rule, 84; The *Virgil*, 2 W. Rob. 204; The *Speed*, id. 227; The *Ebenezer*, 7 Jur. 1117; *Moorsom v. Moorsom*, 3 Hag. Ecc. 97; The *Crusader*, Ware, 439.

† 2 Brow. Civ. and Ad. 361; *Dunlap*, 192, 193; *Betts' Prac.* 38, 57-59. See the precedents referred to in the Index.

‡ *Furniss v. The Magoun*, Olc. 55.

The following is the form of an exception :

§ 467. "To the Honorable, &c.

"The Exceptions of David Jones, defendant, to the libel of James Jackson, libellant, allege that the said libel is informal and insufficient, as follows :

"*First Exception.*—That the same is not signed by the libellant, nor by any proctor of this court.

"*Second Exception.*—That the same does not allege that the libellant has sustained any damages in the matter of the libel ; nor that the defendant is indebted to the libellant in any sum.

"*Third Exception.*—That the third article thereof is scandalous and impertinent.

"E. F., *Proctor for Defendant.*"

§ 468. If on the libel itself, it appears that the libellant ought not to have the relief for which he prays, or that the court have not jurisdiction, instead of answering the facts alleged in the libel, he may except to the libel, stating in an exception the point in which he considers the libellant's case defective ; or if there be any single fact on which the defendant chooses to rely as a bar to the libellant's demand, — as a prior judgment or decree, or release, — an accord and satisfaction, — a forfeiture, or the like, — he may set it up alone, and put his case upon that issue. It is not usual to adopt this course, because he may set up the subject matter of the plea in his answer, and have the same benefit of it, without losing his defence on the general merits, if he fail in the matter of the plea. The practice, therefore, prevails of uniting the matter of the plea and the answer in the same pleading. Pleas of this sort are called exceptions. If they set up matter in abatement merely, they are called dilatory exceptions ; if matter in bar, they are called peremptory exceptions.*

The following is the form of such plea or exception :

§ 469. "To the Honorable Samuel R. Betts, Judge of the Dis-

trict Court of the United States, for the Southern District of New York:

"The exception of David Jones, defendant, to the libel of James Jackson, libellant, alleges that, on the tenth day of June last, the said libellant, in consideration of one dollar to him paid, released the said defendant from the cause of action set forth in the said libel; and, therefore, the said defendant is not bound further to answer the same; and he prays that the said libel may be dismissed with costs.

"DAVID JONES.

"Sworn, &c.,

"E. F., *Proctor for Def't.*"

§ 470. The libellant may, in like manner, except to the sufficiency, or fulness, or distinctness, or relevancy, of the answer to the articles and interrogatories in the libel.

Exceptions must be carefully prepared, specifying in the simplest and clearest manner, in separate exceptions, the matter excepted to, each exception being numbered; and the exceptions must be put in without unnecessary delay,—the time is usually fixed by the rules of the court. They must be filed with the clerk, and notice thereof given to the opposite party. He may then, at any time before the matter of the exceptions has been decided by the court, move to amend his pleading, or give notice that he submits to any or all of the exceptions, in which case, on filing such notice, the clerk will enter, of course, the proper order as to such exceptions,—that the defendant answer further, or more fully, or more distinctly, or that the irrelevant matter be stricken out."

§ 471. If there be any exceptions not submitted to, they are noticed for hearing before the court by either party, and each exception is overruled, or adjudged good and valid by the court,—and as to such as are adjudged good and valid, the court must order the defendant to answer the same within such time

¹⁰ Ad. Rule, 28; Betts' Prac. 58, 59; *Town v. The Western Metropolis*, 28 How. Prac. 283.

as the court shall in the order direct; and may also impose such costs on the defendant as may be reasonable. And the court may also, as a further sanction to its order, compel the defendant to make further answer, or it may direct the matter of the exception to be taken *pro confesso*, against the defendant to the full purport and effect of the article of the libel, which it purports to answer, as if no answer had been put in thereto.¹¹

§ 472. *Answer*.—If the libel, whether it be *in rem* or *in personam*, prays for an answer, then all parties intervening as defendants, must put in an answer to the allegations of the libel. This answer, when the sum or value in dispute exceeds fifty dollars, exclusive of costs, must be on oath, or solemn affirmation, and must be full, explicit, and distinct, to each separate article of the libel and each separate allegation in the libel, in the same order as numbered in the libel; and must, in like manner, answer each interrogatory propounded at the close of the libel.¹²

When, however, the sum or value in dispute does not exceed fifty dollars, exclusive of costs, the foregoing requirements need not be observed, unless the court is of opinion that they are necessary for the purposes of justice in the case before it.¹³

§ 473. The following is the form of an answer:

"To the Honorable Samuel R. Betts, Judge of the District Court of the United States, for the Southern District of New York:

"The answer of John Richards, of Portland, in the State of Maine, intervening for his interest in the brig Spartan, to the libel of Edmund Kimball, junior, and George R. Sheldon, of the city of New York, merchants, copartners, doing business under the name of Kimball and Sheldon, answers and alleges as follows:

"*First*. That this respondent is ignorant of the matter con-

¹¹ Ad. Rule, 30.

¹² Ad. Rule, 27; *Hutson v. Jordan*, Ware, 385; *The Crusader*, id. 439; *The Boston*, 1 Sum. 328; *Macomber v. Thompson*, id. 384; *Orne v. Townsend*, 4 Mason, 541; *Betts' Prac.* 51; *Dunlap's Prac.* 197-210; *Treadwell v. Joseph*, 1 Sum. 391; *The Commander in Chief*, 1 Wall. 49; *Dupont v. Vance*, 19 How. 163.

¹³ Ad. Rule, 49.

tained in the first, fourth, and fifth articles of the said libel, and as to the matters contained in the second and third articles of the said libel, he has no personal knowledge, but has understood and believes that the same are, in a great part, falsely alleged, and that the truth is as is hereafter alleged.

§ 474. "*Second.* That the said brig Spartan, being in good order, and well and sufficiently equipped and manned, arrived in the bay of New York early in the evening of the 28th day of November, it being moonlight, and the wind and tide being favorable; but the wind being light, the vessel did not enter the East river before the moon had set, and it had become overcast and dark, so that it was difficult to see a vessel without a light, even at a short distance. That when about to anchor, the master and crew of the said brig Spartan discovered a vessel, which proved to be said brig Buenos Ayres, lying in the stream at single anchor, directly ahead of them, and but a short distance off, and by the force of the tide and wind, without any neglect, carelessness, or default of the master and crew of the Spartan, and notwithstanding every possible precaution, she was driven towards, and in contact with, the said brig Buenos Ayres, and sustained damage to a large amount, to wit, to the amount of two hundred and fifty dollars and upwards.

§ 475. "*Third.* That at the time above mentioned, the brig Buenos Ayres was lying at anchor in the harbor of New York, in the channel of the East river, between the Fulton Ferry and the South Ferry, and had not a light set in her rigging, on deck, or elsewhere visible to those on board of the brig Spartan, and the said accident was occasioned by negligence and want of care in the master, officers, and crew of the said brig Buenos Ayres, in anchoring the said brig, without proper light, in the channel of the East river, where inward bound vessels must pass.

"*Fourth.* That all and singular the premises are true.

"Wherefore the respondent prays that this Honorable Court would be pleased to pronounce against the libel aforesaid, and

to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

“BURE & BENEDICT,

“Sworn, &c.

Proctors for Respondent.

“E. BURE, *Advocate.*”

§ 476. The defendant is not, however, bound to answer any allegation or interrogatory contained in the libel, which will expose him to any prosecution or punishment for a crime, or any penalty, or any forfeiture of his property for any penal offence. He cannot pass by in silence such allegations or interrogatories, but must object to answer them on such grounds. If his objection covers the whole matter of the libel, he may set up his exemption in a single exception to the proceeding. In other cases, he may unite his exception with his answer.¹⁴

§ 477. *Interrogatories.*—As the libellant has the right to propose interrogatories to the defendant, so the defendant has the right to resort to the oath of the libellant, and may, at the close of his answer, propose to the libellant any interrogatories touching any matters charged in the libel, or touching any matter of defence set up in the answer. These interrogatories should be numbered, and the libellant must answer in writing in detail, under oath or solemn affirmation, each interrogatory in the order of their numbers. Like the defendant, the libellant is not bound to answer any interrogatory which will expose him to any prosecution or punishment for a crime, or any penalty, or any forfeiture of his property for any penal offence.

Either party may, at any time, before hearing, propose interrogatories to the other, and he is not compelled to annex them to his pleading, or to put them in at the same time that he files his pleading, although that is the usual course.¹⁵

The following is the form of interrogatories:

§ 478. “Interrogatories propounded to James B. Tucker, libel-

¹⁴ Ad. Rule, 31.

¹⁵ Ad Rule, 32; Conk. Treat. 2d edit. 356; Dunlap's Prac. 125; *ante*, § 476.

lant, by Abraham Farmer and Timothy Stevens, respondents, in a cause civil and maritime, for wages, in the District Court of the United States, for the Southern District of New York.

"*First Interrogatory.* Did not Timothy Stevens above named, some time in the month of June last past, or at some other time, and when in particular, tender to you, or offer to pay to you some, and how much money, which he admitted to be due to you, for wages for services on board the ship Orbit?"

"*Second Interrogatory.* Did not said Stevens so tender, or offer to pay to you the sum of twelve dollars and fifty cents?"

"*Third Interrogatory.* Did you not decline receiving the said sum or some sum of money, tendered or offered to you by said Stevens?"

"E. H., *Proctor.*"

§ 479. In default of due answer, by the libellant, to any interrogatories, the defendant may except to his answer, in the same manner as the libellant may except to the answers of the defendant; and on the hearing of the exceptions, the court may adjudge the libellant in default and dismiss the libel, or may by attachment compel a further answer, within a time to be fixed by the court; or may take the subject matter of any interrogatory which is insufficiently answered *pro confesso*, in favor of the defendant, as the court, in its discretion, shall deem most fit to promote justice.¹⁶

§ 480. If the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation, at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, extend the time, award a commission to take the answer of the party when, and as soon as it may be practicable, or may dispense with it altogether.¹⁷

¹⁶ Betts' Prac. 58, 59; Ad. Rule, 32.

¹⁷ Ad. Rule, 33.

§ 481. To the answer of the defendant, if the libellant does not admit its statements, he replies by a replication, which is usually in a general form, simply taking issue upon the answer.* A general replication is put in without oath, and may be in this form :

"To the Honorable Samuel R. Betts, Judge of the District Court of the United States, for the Southern District of New York:

"The replication of Thomas G. Smith, libellant, to the answer of John P. Goodman, defendant, alleges, that he, the said libellant, will aver, maintain, and prove his libel to be true, certain, and sufficient; and that the said answer of the said defendant is uncertain, untrue, and insufficient; and he humbly prays, as in and by his said libel he has already prayed.

"Burr & Benedict, *Proctors for Libellant.*"

§ 482. It is sometimes desirable to reply to an answer setting up new matter. In that case, a special replication may be put in replying to such new matter. A special replication should be sworn to like an answer.

The pleadings may thus go on, by turns, so long as the mode of pleading may require it. They are called replications, duplications, triplications, quadruplications, and so on; but they are very rarely resorted to, and may be considered as obsolete.

As the libel may set forth many causes of action, so any of the pleadings may set up as many distinct matters of defence, avoidance, or reply, as the case may afford.¹⁸

* No replication is now allowed; *Vide ante*, § 367, note.

¹⁸ Betts' Prac. 48.

CHAPTER XXVII.

AMENDMENTS AND SUPPLEMENTAL PLEADINGS.

§ 483. As has been before remarked, causes in admiralty must be heard and decided according to the allegations of the parties, and the proofs under them; and it has always been the practice of the American Admiralty Courts, to allow every facility to the parties, to place fully before the court their whole case, and to enable the court to administer substantial justice between the parties, without circuitry of action, or turning round in court, and never to allow a party to overcome his adversary by the man-traps and spring-guns of covert chicanery, or by the surprises and technicalities of mere pleading or practice. Therefore, on proper cause shown, omissions and deficiencies in pleadings may be supplied, and errors and mistakes in practice, in matters of substance, as well as of form, may be corrected, at any stage of the proceedings, for the furtherance of justice. Where merits clearly appear on the record, it is the settled practice in admiralty not to dismiss the libel, but to allow the party to assert his rights in a new allegation.¹ The whole subject rests entirely in the discretion of the court, as well in relation to the relief to be granted, as to the terms on which it shall be granted. Amendments may be made on application to the court at any time, as well after as before decree; and at any time before the final decree, new counts or articles may be added, and new and supplemental allegations may be filed; and this may be done after the cause is in the appellate court, if the new allegations be confined to the original subject of controversy. A new subject of controversy cannot thus be inserted in the appellate court.²

¹ *The Adeline*, 9 Cranch, 284; *The Edward*, 1 Wheat. 261; *The Divina Pastora*, 4 Wheat. 52.

² *Ad. Rule 24*; *Jenks v. Lewis, Ware*, 52; *The Edward*, 1 Wheat. 261; *The Pal-*

§ 484. Before any pleading is answered, or the opposite party has taken any subsequent step in the cause, amendments may be made, of course, without previous notice to the opposite party, or application to the court.* In such cases, the amendment must be filed with the clerk, and if it be after the appearance of the opposite party, a copy of it should be served on him. The same rule as to verification by oath, applies to the amendment, as to the original pleading.

In case one of several plaintiffs or defendants dies before final judgment, if the cause of action survive to or against his co-partners, the suit does not abate by such death, but a suggestion of the death is made on the record, and the suit proceeds in the name of the survivors.

In case a sole plaintiff or defendant dies before the final judgment, in case the cause of action by law survive, the executor or administrator of the deceased party has full power to prosecute, or defend the suit to final judgment; and the court and the opposite party is bound to consider the executor or administrator as the real party. The executor, however, is always entitled to a continuance of the cause, on motion till the next term, but the other party has not such right.†

§ 485. The Supreme Court have construed this section, in a common law case, holding, that after the order admitting the executor to appear, it is too late to contest the fact of his being an executor. It is apparent, therefore, that the motion to be so admitted, should be made on notice to the other party, to enable him to contest that fact.

myra, 12 id. 1; *The U. S. v. Four Part Pieces of Woollen Cloth*, 1 Paine, 435; *Betts* Prac. 57; Jud. Act, § 32; *Conk. Treat.* 2d edit. 357, 360; *Elwell v. Martin*, Ware, 58; *Pratt v. Thomas*, id. 437; *The Adeline*, 9 Cranch, 244; *Crawford v. The William Penn*, 3 Wash. 481; *The Marianna Flora*, 11 Wheat. 1; *Town v. The Western Metropolis*, 28 How. Pr. 283; *Conk. Ad.* 606; *ante*, § 358.

* *Vide* *Thomas v. Gray*, Blatchf. & H. 493.

† *Betts' Prac.* 58, 59, 110; *The Adeline*, 9 Cranch, 244; *The Edward*, 1 Wheat. 261; *The Marianna Flora*, 11 Wheat. 1; *The Caroline v. The U. S.* 7 Cranch, 496; *The Harmony*, 1 Gal. 123; *Jenks v. Lewis*, Ware, 51; *Housselman v. The North Carolina*, 15 Pet. 40; *The Boston*, 1 Sum. 328; Jud. Act, § 31; *Dunlap*, 87; *Wilson v. Codman's Executor*, 3 Cranch, 193; *Griswold v. Hill*, 1 Paine, 483; *Nevitt v. Clarke*, Olc. 316; *Vide* *The Octavia*, 1 Mason, 149.

If the executor or administrator neglect or refuse to appear and make himself a party, the court may issue a process requiring him to show cause why the action should not proceed; and if he fail to appear within twenty days after service of such process, then the court may proceed and render judgment against the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party to the suit.*

§ 486. Answers, as well as libels, and indeed all pleadings should state the matter with all due certainty and precision. In case of misconduct set up, there must be special allegation of the facts, with due certainty of time, place, and circumstances. Any responsive pleading should reply to each article by a clear and exact admission, or denial, or defence to the matter of it. Proper certainty and precision are of the greatest importance; for as the party cannot regularly prove that which is not properly alleged, so it is not sufficient that there are facts proved, which might have a material bearing, unless there are allegations suited to bring them before the court as matters of plea and controversy.†

§ 487. The general rule is, that the whole substantive case of a party should be at once brought before the court, but supplemental pleadings (libel, answer, interrogatories, or exceptions) may be filed whenever new parties, new allegations, or a more full, definite, or accurate statement of the subject matter of the controversy may be necessary, and supplemental pleadings, and not affidavits, are the proper mode of bringing before the court such new matter.‡

§ 488. When any pleading or paper is defective in form, or substance, it may be amended, and any party may, at any time, thus correct his papers by further, or more full and regular, supplemental, amendatory, exceptive, or responsive allegations to be filed in the cause.

* *Wilson v. Codman's Executor*, 3 Cranch, 193; *Griswold v. Hill*, 1 Paine, 483.

† *The Boston*, 1 Sumn. 331; *Macomber v. Thompson*, id. 384.

‡ *The Ebenezer*, 7 Jur. 1117; *Betts' Prac.* 21; *Waring v. Clarke*, 5 How. 441; *Cutler v. Rae*, 7 id. 729; *Moorsom v. Moorsom*, 3 Hag. Ecc. 97; *The Virgil*, 2 W. Rob. 204; *The Speed*, id. 227.

Parties are not required to furnish copies of original pleadings to the adverse party, but each party is required to take out copies from the clerk's office. In the case, however, of new, further, amendatory, or supplemental papers, they must be furnished to the opposite party.

When such further papers are put in, if they affect the proceedings in any material point, the opposite party will be entitled to the indulgence of the court, in a continuance of the cause.

CHAPTER XXVIII.

STIPULATION AND BAIL.

§ 489. It has been before stated that the proper mode of giving security or bail, in admiralty, is by stipulation, instead of the common law mode of bond or recognizance. No particular form of words is necessary to constitute a stipulation. It is sufficient if it appear that the party stipulating undertakes to respond, according to the legal requisition; and a bond or recognizance would be held good in the American Admiralty courts. There have been doubts raised on the subject, but they have been based on some hypercritical application of English rules of jurisdiction, which have held that the admiralty could not have jurisdiction of an action on an instrument under seal. The usual form of the admiralty stipulation briefly recites the pendency of the suit, and closes by distinctly assuming the required obligation. It is executed without seal, and should be acknowledged by the party before the court, the clerk, or a commissioner.¹

§ 490. Stipulations differ from other contracts in an important particular. In contracts between parties, it is the intention of the parties, as expressed in the instrument, which is to govern the construction, but the security which is taken in the progress of a suit in a court of admiralty, for the purpose of sustaining and enforcing its jurisdiction and authority, is taken under the order of the court, or of the law. Its terms are directed by the law or the court, and as the will of the party is not consulted as to the tenor of the obligation, so his will or intention is not regarded in its interpretation. If, therefore, there be an ambiguity in the terms of the stipulation, or if the construction of them be doubtful, it is not the

¹ Dunlap's Prac. 143; *Lane v. Townsend*, Ware, 286; Ency. de Jurisp. art. Stipulation; Dig. ib. 45; Conk. Treat. 427.

intention of the party for which we are to inquire, for the will of the party had nothing to do in determining its conditions,— the doubt must be removed by consulting the intention of the court, or the law which required the stipulation and dictated its terms.*

§ 491. Instead of a stipulation with personal surety, the court will usually allow a deposit of money in the registry of the court, as security.

When personal sureties are given, they are required to swear to their responsibility to twice the amount of the sum for which they undertake, over and above all debts.

If any party in interest desire a more strict inquiry into the responsibility of the sureties, he may, by an exception and notice thereof to the opposite party, require that the sureties appear personally before the court, or a commissioner, and submit to a strict examination as to their property and responsibility.†

§ 492. If either party put in insufficient sureties, or the sureties become irresponsible or insufficient, or remove out of the district, on proper application, the court will compel further security, under the penalty of a stay of the proceedings, in case of a libellant, or in case of defendants, by denying the right to the party further to appear and contest the suit.‡

§ 493. The stipulations taken in the course of an admiralty cause, are of several kinds. Under the Roman practice they were classified in various divisions and subdivisions, according to their nature, according to the occasion calling for them, and according to their form; but this classification is obsolete, and the learning connected with it is of little practical utility.⁴

In the case of *Lane v. Townsend* (Ware, 286, 304), Judge Ware, with his characteristic learning and acuteness, has presented the subject very clearly and correctly, as the matter stood before the promulgation of the admiralty rules of the Supreme Court.

* Dig. 45, 1, 52; *Lane v. Townsend*, Ware, 292; *Cure v. Bullus*, 7 N. Y. Leg. Obs. 345.

† Ad. Rule, 6, 10, 11; *Betts' Prac.* 41.

‡ *Lane v. Townsend*, Ware, 296; *Dunlap's Prac.* 158.

In the American Admiralty now, the stipulations, for costs, for costs and damages, for value, to appear and abide the decree of the court, and pay the amount recovered, are the only stipulations practically in use. They vary slightly in their form, to adapt them to the various purposes to which they are applied in the original and appellate courts.⁵

§ 494. The libellant's stipulation for costs *in personam* and *in rem*, is for the payment of all such costs and expenses as shall be awarded against him by the final decree of the court, or, upon an appeal, of the appellate court.⁶

In case of libels *in personam*, when no bail has been taken, and no property has been attached to answer the exigency of the suit, the court may, in its discretion, require the defendant to give a stipulation with sureties, in such sum as the court may direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order in the progress of the suit.⁷ It is presumed that the court, in such cases, would make the giving the stipulation a condition of permitting the defendant to appear and contest the suit.

§ 495. In case of filing a mere claim to the property *in rem*, the claimant must file a stipulation, with sureties in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or, upon appeal, by the appellate court.⁸ The claimant's property being in custody, he is properly liable only for costs.

In case of intervention by a third person, in a suit or proceeding *in rem*, the stipulation is to abide by the final decree, and pay all such costs, expenses, and damages, as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.⁹ There are obvious reasons why a third person intervening should be responsible for damages as well as costs.

⁵ Ad. Rule, 3, 4, 10, 11, 25, 35.

⁷ Id. 25.

⁸ Id. 26.

⁶ Id. 26.

⁹ Id. 34.

§ 496. The stipulation of bail to the action *in personam*, is given on the arrest of the party, or on his appearing in discharge of his property or credits attached. The stipulation is, that he will appear in the suit, and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court.¹⁰ On this stipulation the bail have no right to surrender their principal, nor has the principal any right to surrender himself in discharge of the bail. The stipulation is an absolute undertaking to pay the decree.¹¹

§ 497. The stipulation of bail to the action in a suit *in rem*, is given to procure the discharge of the property proceeded against. It has been before remarked, that on such a discharge the owner takes the property *cum onere*, and it remains in his hands, subject to all the liens which legally attach to it. It is only necessary, therefore, that he give security to pay what the libellant may recover, leaving all other persons to assert their demands by a new proceeding *in rem*, after the discharge. The owner is therefore required, before taking his property, to give a stipulation, with sureties, in such sum as the court shall direct, to abide by the decree, and pay the money awarded by the final decree rendered by the court, or, in case of appeal, by the appellate court.¹²

§ 498. The stipulation for value is given in a suit *in rem*, where the suit is brought, not to enforce a partial lien upon the property, but to recover the property, or to sell the property, as in cases of seizure, of litation, of salvage, of possessory or petitory suits, or suits against recusant owners. In all such cases, where a party is entitled to have the property delivered on bail, he is bound to stipulate, with sureties, to pay the full value of the property. And in any case, a party may have his property delivered to him, on his giving the proper stipulation, with sureties, for the full value of the property. This value may usually be fixed by the consent and

¹⁰ Ad. Rule, 8, 4; *vide* precedents in the Appendix.

¹¹ *Lane v. Townsend*, Ware, 297; *Malynes*, 88.

¹² *Ante*, § 447; *The Langdon Cheves*, 2 Mason, 59; *The Palmyra*, 12 Wheat. 10; Ad. Rule, 10, 11.

agreement of parties; if not, then it is ascertained by an appraisal by sworn appraisers, to be appointed by the court, on motion and hearing of the parties. The value being ascertained, the claimant must give a stipulation, with sureties, in that amount, that he will, on the interlocutory, or final order or decree of the court, or, in case of appeal, of the appellate court, on notice of such order or decree to the proctor for the claimant, pay into court the sum ascertained as the value."

§ 499. The Act of March 3, 1847, entitled "An act for the reduction of Costs and Expenses of Proceedings in Admiralty, against Ships and Vessels," requires a brief notice in this connection. The inconsistency, impracticability, and injustice of its provisions are such that it has been productive of nothing but evil, by counteracting the laudable purpose expressed in its title. It is unnecessary to speak of the motives or measures of those who imposed upon unsuspecting members of Congress, and induced them to hurry through both houses of Congress, in the confusion of the last day of the last session of that Congress, a law so excellent in its apparent purpose, and so lame and impotent in its provisions, further than to say, that it was a covert attempt, practically, to deny justice to seamen, notwithstanding the favor with which all nations, and especially our own, regard their claims. The balance due to a seaman is usually less than fifty dollars, and rarely exceeds one hundred dollars, and in case of dispute, they are the easy victims of oppression, if they are without professional aid. This act seeks to compel them, even when successful, to submit to a decree for their little debt *without costs*,—a ruinous decree,—while it leaves to the merchant, with his larger demand, the right to a full and just decree for his debt, *with costs*. The effect of such discrimination is apparent as soon as it is understood. It practically deprives the seaman of his time-honored and sacred lien upon the vessel. It does not reduce the costs and expenses. They are untouched in amount. They are only thrown upon the innocent, instead of the guilty parties. The clerk cannot refuse to perform his duties,—the marshal must assume his great responsibility of custody and

¹³ Lane v. Townsend, Ware, 296; *vide* the forms in the Appendix.

care,—pay for advertising,—pay a keeper, and incur other necessary disbursements, and can have neither any fees nor reimbursements, unless the libellant recover and collect a sum so large that fifty per cent of it will pay all the fees of the witnesses and commissioner, and leave a residue to be divided, *pro rata*, between those responsible, necessary, and involuntary officers of the government; and the proctor, who alone can pilot the seaman through the courts, is absolutely denied all costs, except from the pocket of the seaman."

The act is as follows:

§ 500. "*An Act for the Reduction of the Costs and Expenses of Proceedings in Admiralty against Ships and Vessels.*

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That in any case brought in the courts of the United States, exercising jurisdiction in admiralty, where a warrant of arrest, or other process *in rem*, shall be issued, it shall be the duty of the marshal to stay the execution of such process, or to discharge the property arrested, if the same has been levied, on receiving from the claimant of the same a bond or stipulation in double the amount claimed by the libellant, with sufficient surety, to be approved by the judge of the said court, or, in his absence, by the collector of the port, conditioned to abide and answer the decree of the court in such cause; and such bond or stipulation shall be returned to the said court, and judgment on the same, both against the principal and sureties, may be recovered at the time of rendering the decree in the original cause: *Provided*, That the entire costs in any such case, in which the amount recovered by the libellant shall not exceed one hundred dollars, shall not be more than fifty per cent of the amount recovered in the same, which costs shall be applied, first, to the payment of the usual fees for witnesses and the commissioner, where a commissioner shall act on the case, and the residue to be divided, *pro rata*, between the clerk and marshal, under the direction of the judge of the court where the cause may be tried: *Pro-*

" Conk. Treat. 399, 445.

vided, further, that no attorney's or proctor's fees shall be allowed or paid out of the said costs.

"Approved, March 3, 1847."

§ 501. Does the act intend to allow every person, even a stranger, to take possession of a libelled vessel, giving a bond to pay the demand for which she is libelled?—if not, how is the marshal to discriminate; or does it only extend to a "claimant," as known to the admiralty practice, one who has filed his claim showing his interest, and given the necessary stipulation,—if so, is the claim to be filed with the marshal? Does it embrace all cases *in rem*, and transfer from the court to the marshal the important judicial power of staying proceedings in a cause, and disposing of the questions of delivering property on stipulation,—without appraisal, without notice to the libellant,—without orders or proceedings in court? How is the libellant to proceed to a decree when no property is arrested, and no party appears? Of what use is a bond to abide and answer a decree in "the original cause," when that cause has but one party and he the libellant? These and other pregnant questions must be answered by those who seek to apply the act. The practice under it is simple:

*Prepare a bond,—have it executed with surety, and approved by the judge, or the collector of the port,—give it to the marshal, and take the property,—without fee or reward to any one."*¹⁵

§ 502. If a libellant be unable to give security for costs, he is not thereby denied justice, but is, on application to the judge, permitted to give the juratory caution, or security by his oath. This is analogous to the common law practice of suing *in forma pauperis*. That is to say, he personally stipulates in the necessary amount, to appear from time to time, as required by the court, and adds to it his oath that he will do so. The defendant may also, by order of the judge, be permitted to give the juratory caution in proper cases, where he cannot procure bail. This security is but rarely taken.¹⁶

¹⁵ Conk. Ad. 446-8; *vide* the form of the Bond, in the Appendix.

¹⁶ Dunlap's Prac. 157; Conk. Prac. 463, 538; Marriot's Forms, 354.

The juratory security for costs is in the following form :

"In the District Court of the United States for the Southern District of New York.

"In a certain cause, civil and maritime, wherein A B is libellant and C D is defendant,—on this tenth day of February, 1849, the said A B personally appeared and stipulated in the sum of one hundred dollars, to prosecute this said cause, and to pay all costs and expenses which may be awarded against him herein by the final decree of this court, and, in case of appeal, of the appellate court; and to appear on the twelfth day of February instant (the return day), and as often afterwards as he shall be ordered by the court. And the said A B made oath that he would appear as aforesaid. "A B.

"Taken, acknowledged, and sworn,

February 10th, 1849, before me,

"CHAS. W. NEWTON, *U. S. Commissioner.*"

CHAPTER XXIX.

SEAMEN'S WAGES.

§ 503. THE character of seamen and the nature of their employment has induced Congress to provide specially for the collection of their demands for wages. Seamen have always been considered as wards of the admiralty, and the wages of their perilous service have been by all nations highly favored in the law. It was the great considerations of policy and justice connected with that humble but most useful class of citizens, that induced the English common law courts to leave to the admiralty the undisputed cognizance of suits for seamen's wages, and to make those wages a lien upon the last plank of the ship. A cheap and summary mode has been, therefore, provided, for hearing the controversies in relation to their wages, which are usually of small absolute amount, but of very great importance to the seamen.

§ 504. As soon as the voyage is ended, and the cargo or ballast discharged, the seaman is entitled to his wages. His right to sue for them *in personam* is perfect; the provisions of the Act of July 20th, 1790, which prescribe the manner in which his suit may be prosecuted, having reference only to actions *in rem*.¹ If, however, there be any dispute as to his wages, or if he be discharged from the vessel, he may, without any delay, proceed to enforce payment by proceedings *in rem*. If the balance be admitted, he must wait ten days, or, at least, a reasonable time, after the cargo is out, before he commence. If the vessel have left the port, when the voyage ended, without paying the wages, or is about to go to sea again before the expiration of the ten days, he proceeds by libel,

¹ Freeman v. Baker, Blatchf. & H., 372; Francis v. Bassett, Sprague, 16; The Commerce, id. 34; Collins v. Nickerson, id. 126; The William Jarvis, id. 485.

in the first instance, and arrests the vessel, — all the seamen joining in the same suit, — and the suit proceeds like other suits *in rem*. In all other cases he proceeds by a preliminary summons before a magistrate, before whom the question of probable cause of suit is investigated.*

§ 505. In such cases, the judge of the district, or a magistrate, or United States commissioner, issues a summons to the master of the vessel to appear before him and show cause why process should not issue against the vessel, according to the course of the admiralty, to answer for the wages. This summons should be founded on an affidavit, or a libel, showing a *prima facie* right to sue. On the return of the summons, if the master do not appear, the certificate of sufficient cause is given of course. If the master appear, he is permitted "to show that the wages are paid, or otherwise satisfied or forfeited," or to settle the dispute on the spot, without further suit. If he does neither, the magistrate gives a certificate that there is sufficient cause whereon to found admiralty process, and the certificate, with the libel, is filed with the clerk, who issues the process against the vessel, and the suit proceeds in the regular manner, according to the course of the admiralty.'

§ 506. The suit being thus commenced, if there be any other seamen on the same voyage, having like cause of complaint, they are not compelled to repeat the preliminary proceeding, but by petition, stating their case, they are allowed to join in the suit, which is done by filing their petition and annexing it to the libel. They are then considered as original libellants, and the suit proceeds, in their collective names, to a decree. Their rights are entirely separate and independent. They are co-libellants, but not joint libellants, and they are competent witnesses for each other. Each man's case must be separately proved, — should be separately passed upon by the court, and the decree should be separate for each, especially in cases in which the amount will justify an appeal.'

* Betts' Prac. 60, *et seq.*; Seamen's Act of July 20, 1790, 1 Stat. at Large, 183; *vide* The Merchant, Abb. Ad. 1; The Eagle, Olc. 232; The Trial, Blatchf. & H., 94.

* Betts' Prac. 60, *et seq.*; *vide* the precedents in the Appendix.

* Oliver v. Alexander, 6 Peters, 143.

§ 507. The practice in these cases is founded on the "Act for the Government and Regulation of Seamen in the Merchant Service." This is believed to embrace all vessels not in the national naval service. The first three sections of the act relate to vessels and voyages of a particular character, but other sections of the act embrace "any ship or vessel," "any seaman or mariner," and the careful use of different phraseology for different purposes, in the different sections, shows that the language, in every case, was intended to have its appropriate force.⁵ The law, as administered under this act in the Southern District of New York, will be found very fully laid down in Betts' Practice, pp. 59-68.

By the act of 1846, chap. 60, canal boats, navigated without masts or steam, are not subject to be libelled for wages.

§ 508. The learned judge of that district, with a desire to promote expedition and to reduce expense, in 1838 established for that district a summary practice, in all cases when the demand is under \$50, and, of course, not subject to appeal. As that practice is local, it will not be set forth here in detail. It will be found in the rules of that court, which are given in the Appendix, and in the full commentary on those rules in Betts' Practice, pp. 16, 78-82. The statutory practice of the preliminary summons and this summary practice, greatly reduced expenses. It is, however, much to be desired that Congress, or the Supreme Court, would enact a lower tariff of fees, in plenary cases, arranged with a full knowledge of the course of admiralty proceedings and the wants of commerce in this behalf.

⁵ Seamen's Act of July 20, 1790, 1 Stat. at Large, 133; Acts of 1846, p. 61.

CHAPTER XXX.

PRIZE CAUSES.

§ 509. Before property captured can be properly disposed of, it must be condemned as prize, in a regular judicial proceeding, in which all parties interested may be heard.¹ This proceeding must be had in a court of admiralty deciding according to the law of nations. The proper court is the court of the nation or government to which the captor belongs.² In the United States, the only court having original jurisdiction in cases of prize, is the District Court of the United States. To adjudicate in matters of prize, is a portion of the regular functions of that court.³

§ 510. On the breaking out of hostilities the court appoints prize-commissioners.⁴ These commissioners are officers of the court, and subject to its direction and control. They examine the witnesses on the standing interrogatories; and perform such other duties as may be imposed upon them by the law, or the court. The other officers of the court—the district attorney, the clerk, and the marshal—perform their respective functions in prize cases as in cases on the instance side of the court.

§ 511. A peculiarity of prize proceedings is that the evidence upon which the cause must be heard in the first instance, and on which the property must be condemned or acquitted, must come entirely from the vessel taken,—the papers on board the vessel,

¹ *The Henrick and Maria*, 4 Rob. 55; *Jecker v. Montgomery*, 13 How. 498; *Fay v. Montgomery*, 1 Curt. C. C. R. 266; *Stewart v. the U. S.*, 27 Law Rep. 134.

² *Cheviott v. Fausset*, 3 Binn. 220; *Bingham v. Cabot*, 3 Dall. 19; *L'Invincible*, 1 Wheat. 238; *The Santissima Trinidad*, 7 id. 283; *Findlay v. The William*, 1 Pet. Ad. R. 12.

³ *The Amiable Nancy*, 3 Wheat. 546; *The Amy Warwick*, 2 Sprague, 123; *The Anna, Blatchf. Pr. Cas.* 337.

⁴ Act of June 30, 1864, §§ 5, 6; 13 Stat at Large, 307; Prize Rule 9.

and the testimony on oath of the master, officers, and other persons attached to the vessel and on board at the time of the capture.⁶ This peculiarity is of the very essence of the administration of prize law. The common law practice and rules of evidence have no relation to the subject.⁷

At the time of the capture, it is therefore the duty of the captors to secure, take an inventory of, and preserve as evidence, all the papers on board the prize, and to bring in for examination, the master, principal officers, and some of the crew of the captured vessel.⁸

§ 512. As soon as the prize arrives in port, notice should be given by the captors who are in charge of it, to the district judge, or to the prize-commissioners, that the examinations of the captured witnesses may be taken without delay.⁹ These witnesses are examined by the prize-commissioners in writing and upon oath, in answer to the standing interrogatories. These interrogatories are sifting and thorough on all points which can affect the question of prize. They are prepared and published by standing order of the court, and are accessible beforehand to the witnesses. The witnesses are not allowed to have communication with, or to be instructed by counsel. They are produced, each separately and apart from the others, in the presence of the agents of the parties, before the commissioners, whose duty it is to superintend the regularity of the proceedings, and protect the witnesses from surprise or misrepresentation.¹⁰ The commissioners have no authority to use any but the standing interrogatories, and must require each interrogatory to be answered fully. In the event of the refusal of a witness,

⁶ *The Dos Hermanos*, 2 Wheat. 76; *The Pizarro*, id. 227; *The Amiable Isabella*, 6 id. 1; *The Sir William Peel*, 5 Wall. 517; *The Peterhoff*, id. 28; *S. C. Blatchf. Pr. Cas.* 463; *The Cheshire*, id. 151, 463; *The Zavalla*, id. 173; *The Jane Campbell*, id. 101.

⁷ 1 Wheat. Appendix, note II, p. 497; *The Adeline*, 9 Cranch, 244, 284.

⁸ Act of June 30, 1864, § 1, 13 Stat. at Large, 306; *The Eliza and Katy*, 6 Rob. 185; *The Henrick and Maria*, 4 id. 43, 57; *The Dos Hermanos*, 2 Wheat. 76; *The Arabella*, 2 Gall. 368; *The Flying Fish*, id. 374; *The Actor*, *Blatchf. Pr. Cas.* 200.

⁹ Prize Rule 2.

¹⁰ *The Speculation*, 2 Rob. 243; *The William and Mary*, 4 id. 381; *The Apollo*, 5 id. 236.

either to answer at all, or to answer fully, it is their duty to certify the fact to the court.¹⁰ There is no cross examination. These examinations are called examinations *in preparatorio*.

The prize-master should also deliver up to the prize-commissioners, or one of them, all the papers and documents found on board the prize, together with an affidavit made by him, that they are delivered up as taken, without fraud, addition, subduction, or embezzlement.¹¹

§ 512 *a*. As soon as the examinations are completed, each deposition is signed by the witness making it, and also by the commissioners, or one of them. They are then sealed up and transmitted to the proper District Court, together with all the vessel's papers which have not already been delivered up by the captors.¹² These papers and examinations constitute the only evidence on which the cause is first heard. If on this evidence there be doubt, or justice require it, the court may, in its discretion, order further proof; and the court on proper application may order the cargo to be landed, and the packages opened and inspected for the detection of contraband articles, or for ascertaining the destination of the vessel or cargo, or the true character of the voyage.¹³

§ 512 *b*. The necessary papers and the preparatory examinations having been transmitted to the court, it is the duty of the captors to apply to the court without delay, for adjudication; and in case of neglect or refusal on their part, the claimants may so apply.¹⁴ The proceeding for the condemnation of a prize is purely *in rem*. It is commenced, when the capture is made by a national vessel, in the name of the United States, by the United States District At-

¹⁰ Prize Rule 12, 13, 14, 15, 16; *The Peterhoff*, 5 Wall. 28; S. O. Blatchf. Pr. Cas. 463.

¹¹ Act of June 30, 1864, §§ 3, 6, 13 Stat. at Large, 307; Prize Rule 8, 9, 10.

¹² Prize Rule 11, 20.

¹³ *The Peterhoff*, Blatchf. Pr. Cas. 463; *The Adriana*, 1 Rob. 313; *The Romeo*, 6 id. 351; *The Sarah*, 3 id. 330; *The Cuba*, 2 Sprague, 168; *The Lilla*, id. 577.

¹⁴ Act of June 30, 1864, § 28, 13 Stat. at Large, 314; Prize Rule 23; *The Tropic Wind*, Blatchf. Pr. Cas. 66; *The Springbok*, id. 350.

torney, by filing a libel in the District Court." In the case of captures by privateers, the commander employs his proctor and libels in behalf of himself and the other captors. On the libel a monition and warrant issues to the marshal, for the seizure of the property. The notice under the monition is made by publication."

§ 512 *c*. On the return day of the process, if no claim be interposed, upon the usual proclamation being made, and no person appearing, the default of all persons is entered, and the court will then proceed to examine the evidence and make its decree. It is not usual, however, to condemn goods by default, till a year and a day after the service of the process; at the expiration of which time, no claim being interposed, the property is condemned of course, and the question of former ownership is precluded forever, and distribution may be made."

§ 512 *d*. If the parties interested wish to contest the capture, or procure the restitution of property captured, they should, at or before the return of the monition or time assigned for trial, enter their claim before the court. The claim should be made by the parties interested, if present, or if absent, then by the master, or some agent of the owners. A stranger will not be permitted to claim." The claim must be accompanied by an affidavit, which is called the test affidavit, stating briefly the facts respecting the claim and its verity. It should state that the property, at the time of shipment and also at the time of capture, did belong, and if restored will belong, to the claimant; and if there should be any special circumstances in the case, these should be added. The affidavit should be sworn to by the parties themselves, if they are within

¹⁵ Act of June 30, 1864, § 4, 13 Stat. at Large, 307; *Jecker v. Montgomery*, 18 How. 110; *vide* *The Emma*, Blatchf. Pr. Cas. 561; *The Sally Magee*, id. 382; *The Empress*, id. 146, 659; *The Andromeda*, 2 Wall. 481.

¹⁶ Prize Rule, 24, 43, 44.

¹⁷ *The Henrick and Maria*, 4 Rob. 43, 44; *The Stadt Embden*, 1 id. 26; *The Harrison*, 1 Wheat. 298; *The Avery*, 2 Gall. 308; *Stratton v. Jarvis*, 8 Pet. 4; *The Falcon*, Blatchf. Pr. Cas. 52.

¹⁸ Prize Rule, 42; *The Betsey*, 1 Rob. 98; *The Mentor*, id. 181; *The Huldah*, 3 id. 239; *The George*, id. 129; *The William*, 4 id. 215; *The Tobago*, 5 id. 218; *The Susanna*, 6 id. 48; *The Marianna*, id. 24; *The Frances*, 8 Cranch, 335; *Bolch v. Darrel*, Bee, 74.

the jurisdiction. If they are absent from the country, or at a very great distance from the court, it may be sworn to by an agent."

§ 512 *e.* If, upon the hearing, the sentence of the court be a decree of acquittal and restitution, and the property remains specifically in the custody of the court, a warrant or order issues for its delivery to the claimant. If the property has been sold and the proceeds are in court, an order issues for the delivery of such proceeds. If, on account of the absence of probable cause of capture, or by reason of any other misconduct on the part of the captors, damages are awarded against them, the court appoints three commissioners to assess the damages." Costs and expenses are in the discretion of the court and depend upon the proof of probable cause of capture. When, however, further proof has been ordered, costs and expenses are allowed to the captors."

If, upon the hearing, the sentence of the court be a decree of condemnation, the court will order testimony to be taken tending to show who are entitled to share in the distribution, and upon such testimony will make the final decree of distribution."

§ 512 *f.* In prize causes, an appeal lies from the District Court directly to the Supreme Court, whenever the amount in controversy exceeds two thousand dollars, and in other cases, on the certificate of the district judge that the adjudication involves a question of general importance. Such appeal must be made within thirty days of the rendering of the decree appealed from, unless the court shall previously have extended the time, for cause shown in the particular case."

¹⁹ Prize Rule, 42; *The Adeline*, 9 Cranch, 244, 286; *The Betsey*, 2 Gall. 377.

²⁰ Prize Rule, 49, 50; *The Charming Betsey*, 2 Cranch, 64; *The Lively*, 1 Gall. 315; Pratt, Prize Prac. 112.

²¹ *The Einigheden*, 1 Rob. 328; *The Diana*, 5 id. 67; *The Pigeon*, 2 Cranch, 100, note; *The Charming Betsey*, id. 64; *Maley v. Shattuck*, 3 id. 458; *Del Col v. Arnold*, 3 Dall. 333; *The Velasco*, Blatchf. Pr. Cas. 54; *The Jane Campbell*, id. 101; *The Imina*, 3 Rob. 167; *The Principe*, Edw. Ad. R. 70; *The Evening Star*, Blatchf. Pr. Cas. 583; *The Thompson*, id. 377; S. C. 8 Wall. 155; *The Dashing Wave*, 5 Wall. 170; *The Ann Green*, 1 Gall. 274.

²² Act of June 30, 1864, § 9, 13 Stat. at Large, 309; *Kean v. The Gloucester*, 2 Dall. 36; *Penhallow v. Doane*, 3 id. 54; *Bingham v. Cabot*, id. 19; *The Herkimer*, Stewart, Ad. R. 128.

²³ Act of June 30, 1864, § 13, 13 Stat. at Large, 310; *vide* Prize Rule, 51.

CHAPTER XXXI.

HEARING.

§ 513. THE cause, being ready for hearing, is noticed for hearing, according to the rules established in the district where it is to be heard. The circumstances of the different districts vary so widely, that no general rule could well be adopted for all.

The libellant, and the claimant or respondent, are both actors, and either party may notice the cause, and bring on the hearing.¹

§ 514. It has already been stated, that the defendant cannot be heard in his defence, nor introduce evidence in the cause, unless he have appeared in the cause and contested the suit, either by exceptions to the libel, or by answering it. If he does neither, the court will hear and adjudge the cause *ex parte*, upon the evidence offered by the libellant. If the neglect to answer has, however, been from ignorance or other sufficient cause, the court is not precluded from receiving evidence, and may exercise its discretion for the purposes of justice.²

§ 515. At the hearing, if either party be not in attendance, his adversary may take such decree as he would be entitled to if his pleading were confessed. If any postponement be desired by either party, on sufficient reason, it is granted by the judge, the whole matter being in his discretion, he may postpone for a longer or shorter period, absolutely, or on such terms and conditions as justice may demand. The nature of maritime transactions is such, that witnesses are often transient, and their convenience, as well as the necessities of the parties, often exercise an important

¹ Jennings v. Carson, 4 Cranch, 23.

² The David Pratt, Ware, 495; McKinlay v. Morriah, 21 How. 346.

influence in determining the mind of the court in matters relating to the mere conduct of the hearing. The court sometimes commences the hearing by taking the testimony of transient witnesses on either or both sides, without regard to the usual order of proceeding, and then postpones the cause for a longer or shorter time, as may be necessary to take the other testimony and complete the hearing. Sometimes the testimony is all taken, and the cause is postponed till a future day, to hear the arguments of counsel. Sometimes postponement is ordered only on condition that the party asking it shall consent to take the depositions of witnesses in writing, out of court, or to admit what is expected to be proved by them.

§ 516. It is this flexibility of a Court of Admiralty, — its power to adapt itself to the circumstances of the parties and their witnesses, without prejudice, and often with signal advantage to the cause of justice, — that constitutes one of its great points of superiority over the courts of common law and trials by jury.

The full and proper presentment of the facts, the careful consideration and arrangement of them in argument, the due deliberation and reflection upon the facts and the law, which are the usual characteristics of proceedings in an admiralty court, are often impossible in tribunals, of which a necessary part is a jury, drawn by hazard from the community at large, taken forcibly from their private affairs, and without the practised powers of analysis, of memory and of judgment, which alone could enable them to detect fallacies, to unravel the tangled web of deceit, and resist the persuasives of eloquence, especially when compelled to a hurried unanimity in cases where the wisest are compelled to doubt.

§ 517. An admiralty cause is to be decided according to the allegations and proofs, — *secundum allegata et probata*, — and the proofs must correspond to the allegations.* The allegations are to be found in the pleadings. On the hearing, therefore, the first thing to which the attention of the court is called is the

* The Boston, 1 Sum. 381; *ante*, § 402.

pleadings. The advocate for the libellant opens by a very brief and general statement of the nature of his case, and of the defence, and reads the libel; the advocate for the defendant reads the answer, and, if there be other pleadings, each party reads his own. The more circumstantial and careful opening, which the inexperience of jurors renders necessary in trials at common law, is out of place in an admiralty court. The pleadings being read, the proofs are introduced in the same general order which must prevail in all lawsuits, but with less strict adherence to the artificial rules, which are sometimes made to constrain the parties in jury trials. The judge always exercises his discretion as to the order of calling and re-calling witnesses, and the course of examination.⁴

EVIDENCE.

§ 517 *a*. The laws of the state in which the court is held furnish the rules of decision as to the competency of witnesses; and all objections to evidence on the ground of competency must be made at the hearing.⁵

§ 518. *Pleadings*.—What is the legal effect of an answer as evidence has been considered a matter of doubt, and it has been said that, if the answer be not contradicted by two witnesses, or circumstances and one witness, it must be taken as true in all matters responsive to the libel. This is the rule in chancery, but not in admiralty. The answer to the libel has no more force as evidence than the libel itself has. They are not evidence, in the common sense of the word. Being, however, the solemn statement of facts by the parties, under the solemnity of an oath, the court is bound to examine them carefully, and it is impossible that they should not influence the mind of the court; in many cases of nicely-balanced proofs, the influence of the pleadings may well turn the scale.⁶

⁴ The Phil. & T. R. R. Co. v. Stimpson, 14 Pet. 468.

⁵ Act of July 16, 1862, 12 Stat. at Large, 588, *vide* the Appendix; Ryan v. Bindley, 1 Wall. 66; Nelson v. Woodruff, 1 Black. 156; The Trial, Blatchf. & H. 94.

⁶ Hutson v. Jordan, Ware, 898; Cushman v. Ryan, 1 Story C. C. 91; *ante*, §§ 412, 417.

§ 519. *Answers to Interrogatories.*—The power to interrogate the parties furnishes an effectual means of bringing the party before the court, with great advantage, in abridging the more expensive and doubtful *viva voce* proof on trial. Either party, as has been stated, may interrogate the other, in writing, as to any matters of fact, which may be necessary to support the action, or maintain the defence, and the party interrogated is bound to answer, in writing, each interrogatory, unless his answer will expose him to prosecution or punishment for a crime, or to a penalty, or forfeiture of his property for a penal offence. The answers to these special interrogatories are evidence in the cause at the hearing, for both parties.⁷

§ 520. *Depositions de bene esse.*—The provision made by the act of Congress, for taking *testimony de bene esse*, in cases in the courts of the United States, without a *commission dedimus potestatem*, or *letters rogatory*, greatly promotes the convenience of suitors. The depositions are often taken *ex parte*, and they are for that reason exposed to criticism. No presumptions are made in their favor, and they will not be received in evidence, unless the provisions of the act be strictly followed.

The authority conferred upon the magistrate is special, and confined within certain limits and conditions, and the facts calling for the exercise of it should appear upon the face of the instrument, and not be left to parol proof.⁸

§ 521. They may be taken in the following cases:

When the testimony of any person shall be necessary in any civil cause depending in any district in the United States, who lives

⁷ Ad. Rule 23, 31, 32; *Cushman v. Ryan*, 1 Story C. C. 91; *The David Pratt*, Ware, 497, 501, 504.

⁸ Jnd. Act of 1789; *vide* the section of the Act in the Appendix; *Beale v. Thompson*, 8 Cranch, 70; *The Argo*, 2 Wheat. 267; *The Argo*, 2 Gal. 314; *Ketland v. Bissett*, 1 Wash. 144; *Lessee of Banert v. Day*, 3 id. 243; *Bleecker v. Bond*, id. 539; *Pettibone v. Derringer*, 4 id. 215; *Evans v. Eaton*, 7 Wheat. 356; *Nelson v. The U. S.* 1 Pet. C. C. R. 235; *Lessee of Brown v. Galloway*, id. 291; *Ruggles v. Bucknor*, 1 Paine, 358; *The U. S. v. One Case of Hair Pencils*, id. 400; *The U. S. v. John Smith*, 4 Day, (Conn.) 121; *N. Car. Cases*, 81; *Bell v. Morrison*, 1 Pet. 355; *The Patapsco Ins. Co. v. Southgate*, 5 id. 604; *The Thomas & Henry v. The U. S.* 1 Brockenb. 367; 1 Stat. at Large, 73, § 30.

at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of such district, or is about to go to a greater distance than one hundred miles before the time of trial, or is ancient, or is very infirm.

§ 522. They may be taken before the following officers:

Any justice or judge of any of the courts of the United States, or before any chancellor, justice or judge of a Supreme or Superior Court, any mayor or chief magistrate of a city, or judge of a County Court or Court of Common Pleas of any of the United States, who is not of counsel or attorney to either of the parties, or interested in the event of the cause, or before any United States commissioner.*

§ 523. They must be taken in the following manner:

A notification from the magistrate or officer, before whom the deposition is to be taken, to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, must first be made out and served on the adverse party, or his attorney, as either may be nearest, if either is within one hundred miles of the place of taking the deposition, allowing time for their attendance after being notified, not less than at the rate of one day for every twenty miles' travel. And in causes of admiralty and maritime jurisdiction, or other cases of seizure, where a libel shall be filed, in which an adverse party is not named, and depositions are taken before a claim is put in, the like notification must be given to the person having the agency or possession of the property libelled, at the time of the capture or seizure, if known to the libellant."

§ 524. This notification must be "made out and served;" it must therefore be in writing. It should be entitled in the cause, or with reasonable certainty describe the cause. It must be "from the magistrate" "to the adverse party;" it must therefore be signed by the magistrate in his official character, and addressed to the party to be notified, by name, — in suits *in personam*, to the party

* Act of March, 1817, ch. 30, 3 Stat. at Large, 350; *ante*, § 338.

¹⁰ Jud. Act of 1789, § 30, 1 Stat. at Large, 73; *Harris v. Wall*, 7 How. 698.

adverse to him on whose part the deposition is to be taken; in suits *in rem*, in which personal defendants, claimants, owners or possessors of the property, are named in the libel, before a claim is put in, it must be addressed to them; after a claim is put in, it must be addressed to the claimants. If there be no such party named in the libel, and no claim is put in, then it must be addressed to the person having the agency or possession of the property, at the time of the seizure of it in the cause, if he be known to the libellant.

Any person may be compelled to appear, and depose in the same manner as to appear and testify in court. This is by the usual subpoena, served in the usual manner, and if he refuse or neglect to appear, the magistrate may, on due proof of service of the subpoena, bring him before him, by attachment. Such a subpoena may be served upon a witness living without the district, provided he do not live more than one hundred miles from the place of holding court."

§ 525. At the taking of the deposition, the witness must be carefully examined and cautioned, and sworn or affirmed to testify the whole truth. The deposition should have a proper title, showing the cause, and the official description of the officer. The witness may be examined by both parties, or their counsel, if present, and if the deposition be *ex parte*, the magistrate should endeavor, by a careful examination, to get out the whole truth. The testimony must be reduced to writing, either by the magistrate or by the deponent, in his presence; and it must be subscribed by the witness; and the magistrate should put his official jurat to it, with the date, and retain the depositions till he deliver them, with his own hand, into the court for which they are taken; or the magistrate may add his official certificate of the reason for taking the deposition; viz., that the witness resides more than one hundred miles from the place of trial, or is about to go to sea, or otherwise, according to the act, and of the notice, if any, given to the adverse party, stating the time given him to appear. It is well to annex a copy of the notice. The magistrate should state, in his notice to

¹¹ The Patapsco Ins. Co. v. Southgate, 5 Pet. 604; 1 Stat. at Large, 335, § 6.

the adverse party, as well as in his certificate, the reason for taking the deposition, and if he omit to do so, the deficiency cannot be supplied by other proof." If no notice be given, it would be well to certify the reason why it was not given; also, that the officer was not counsel, or attorney, or interested,—that the deposition was reduced to writing by the witness or the officer, and signed by the witness. If these documents be on separate pieces of paper, they should be properly annexed together, and referred to with reasonable certainty. They must then be sealed up by the magistrate, in an envelope, and directed to the court in which the cause was pending, and remain under his seal till opened in court."

They should be indorsed with the title of the cause, and marked "depositions," and they may be forwarded by mail or by private hand.

As soon as they are received by the clerk, he marks their receipt and presents them to the judge in court, who opens them, and the clerk enters the fact in the minutes of the court, and files the depositions, and notifies the proctor of the party on whose behalf they are taken."

§ 526. By a general rule of the District Court of the Southern District of New York, notice must be given to the proctor of the opposite party, of the filing of the depositions, and all objections to the form or manner in which they were taken or returned, are deemed waived, if such objections are not specified in writing, in four days, unless further time be granted by the judge. Exceptions taken thus early will sometimes enable the party to remove, or retake the depositions before the trial."

§ 527. When witnesses are examined on the hearing of a cause in the District Court, in a case in which an appeal will lie, the respective parties may, on satisfying the court that they may not be

¹² *Harris v. Wall*, 7 How. 698; *Pettibone v. Derringer*, 4 Wash. 215; *The U. S. v. John Smith*, 4 Day, (Conn.) 121; *N. Carolina Cas.* 81.

¹³ *Bell v. Morrison*, 1 Pet. 351; *The Patapsco Ins. Co. v. Southgate*, 5 id. 604; *Beale v. Thompson*, 8 Cranch, 70.

¹⁴ *Vide* the forms in the Appendix.

¹⁵ *Betts' Prac.* 86; *D. C. Rule* 113.

able to produce their witnesses, on the hearing of the appeal before the circuit, move to have their testimony taken down in writing, and it shall be so taken by the clerk of the court. The testimony so taken down by the clerk, is taken also *de bene esse*, and is to be used on the hearing of the appeal only in case the witnesses are then dead, or gone more than one hundred miles from the place where the court is sitting, or that by reason of age, sickness, bodily infirmity, or imprisonment, they are not able to travel and appear at court.

§ 528. The depositions themselves, sworn to and certified in form according to the act, will be *prima facie* evidence of the official character of the magistrate, and of the truth of his certificate, and the regularity of the proceedings, to take them so far as they are certified to ; but the opposite party will be always at liberty, before the depositions are read in evidence, to disprove any or all the facts necessary to establish their validity, — and no necessary fact will be presumed, concerning which the certificates and depositions are silent.¹⁶

If the party, against whom the depositions are taken, is present at the examination, it is his duty to make all the objections to the examination which are known to him at the time.¹⁷

§ 529. It has been held, in the First Circuit, that depositions taken during the session of the court, are inadmissible, even if regularly taken, it being the duty of the party and his counsel to be present in court ; and that the taking of the depositions without notice, was good cause for a continuance to enable the other party to cross-examine the witness or repel his testimony, and this is said to be the practice in most of the circuits. Even at a greater distance than one hundred miles, if the adverse party have known counsel residing where the deposition is taken, he should be notified.¹⁸

¹⁶ *Ruggles v. Bucknor*, 1 Paine, 358; *Bell v. Morrison*, 1 Pet. 351; *The Patapsco Ins. Co. v. Southgate*, 5 id. 604, 617; *The Argo*, 2 Wheat. 287; *The U. S. v. Clark*, 1 Gal. 501; *Evans v. Hettick*, 3 Wash. 408; *The Thomas & Henry v. The U. S.* 1 Brock. 367; *Allen v. Blunt*, 2 Wood. & M. 136.

¹⁷ *The U. S. v. One Case of Hair Pencils*, 1 Paine, 400.

¹⁸ *Allen v. Blunt*, 2 Wood. & M. 137, 138; *The Argo*, 2 Gal. 314.

§ 530. To authorize the party to read a deposition taken *de bene esse*, under the act of Congress, he must show that the witness is dead, or gone out of the United States, or out of the district to a greater distance than one hundred miles from the place where the court is sitting, or on a voyage to sea, or that by reason of age, sickness, or bodily infirmity, he is unable to travel and appear in court."

§ 531. *Commission or dedimus potestatem*.—By the proviso to the 30th section of the Judiciary Act, every court of the United States is clothed with the power to grant a *dedimus potestatem*, or commission to take depositions, according to the common usage, when it may be necessary to prevent a failure or delay of justice. This remedial proviso, with its beneficial purpose fully and distinctly set forth, cannot be construed otherwise than to give the courts the fullest power, in every manner usual in courts of justice, to depute their own power to take testimony in a cause where the ends of justice will be promoted by doing so. A commission to take testimony in an enemy's country, in prize cases, is not issued."

The circumstances under which, and the mode in which the application should be made to the court, may be regulated by standing rules of the court, or left to the discretion of the court in each particular case. In the Southern District of New York, it is regulated by standing rules."

§ 532. Commissioners under a commission to take testimony, act under a special authority derived from the court, which must be strictly pursued, and cannot be exercised by any one but the commissioner named in the writ.

In executing a commission, all the interrogatories, direct and cross, must be put to the witnesses, and substantially answered. Within the United States and its territories, witnesses may be compelled to appear before the commissioners, and produce books

¹⁹ *Harris v. Wall*, 7 How. 693; Jud. Act of 1789, § 30; *Sergeant v. Biddle*, 4 Wheat. 508.

²⁰ Jud. Act of 1789, § 30; *The Diana*, 2 Gal. 93; 4 Stat. at Large, 197, note; *Nelson v. The U. S.* 1 Pet. C. C. R. 235; Hall's Ad. 37.

²¹ *Vide* the Rules in the Appendix.

and papers, and testify pursuant to the act of January 24, 1827, which will be found in the appendix. The depositions are not in any sense *de bene esse*, and none of the peculiar requisites in case of depositions *de bene esse*, are material."

§ 533. *Letters Rogatory, — or Commissions sub mutua vicissitudinis.* — By the law of nations, the courts of justice of different countries are bound to mutually aid and assist each other for the furtherance of justice. Hence, when the testimony of witnesses who reside abroad is necessary in a cause, the court or tribunal where the action is pending may send to the court or tribunal within whose jurisdiction the witnesses reside, a writ patent or close, as they may think proper. They are usually called *letters rogatory*, but are sometimes denominated *sub mutua vicissitudinis*, from a clause which they generally contain. By that instrument, the court abroad is informed that a certain claim is pending, in which the testimony of certain witnesses, who reside within its jurisdiction, is required, and it is requested to take their depositions, or cause them to be taken, in due course and form of law, for the furtherance of justice and *sub mutua vicissitudinis obtentu*: that is, with an offer on the part of the court making the request to do the like for the other in a similar case. If these letters rogatory are received by an inferior judge, he proceeds to call the witnesses before him, by the process commonly employed within his jurisdiction, examine them on interrogatories or take their depositions, as the case may be, and the proceedings being filed in the registry of this court, authentic copies thereof, duly certified, are transmitted to the court *a quo*, and are legal evidence in the cause. If the letters are directed to a court of superior

" 4 Stat. at Large, 197; *Vanstophorst v. The State of Maryland*, 2 Dal. 401; *Yeaton v. Fry*, 5 Cranch, 385; *Cunningham v. Otis*, 1 Gal. 166; *The Diana*, 2 id. 93; *Ketland v. Bissett*, 1 Wash. 144; *Winthrop v. Union Ins. Co.* 2 id. 7; *Le Roy v. The Delaware Ins. Co.* id. 223; *The U. S. v. Price's Administrator*, id. 356; *The Argo*, 2 Wheat. 287; *The London Packet*, id. 371; *Sergeant v. Biddle*, 4 id. 508; *Chirac v. Reinicker*, 2 Pet. 613; *Keene v. Meade*, 3 id. 1; *Richardson v. Golden*, 3 Wash. 109; *Lonsdale v. Brown*, id. 404; *Lessee of Rhoades v. Selin*, 4 id. 715; *Bondereau v. Montgomery*, id. 186; *Dodge v. Israel*, id. 323; *Gilpins v. Consequa*, 1 Pet. C. C. R. 86; *Nelson v. The U. S.* id. 235; *Willings v. Consequa*, id. 301.

jurisdiction, they appoint an examiner or commissioners for the purpose of executing them, and the proceedings are filed and returned in the same manner."

§ 534. *Parties.*—The competency of parties, as of other witnesses, depends upon the state law, yet in some instances, as in cases of salvage, mariners' wages, and prize, it usually happens that the parties are the only persons by whom the most important facts can be proved, as no others are present. They are, therefore, from the necessity of the case, as well upon principles of public policy as of private justice, admitted as witnesses in their own favor, for each other to prove such facts, by special exception to the general rule of evidence."

When parties are examined as witnesses, in states where they are not admitted as such by law, they are not to be examined as to any matters except those to which their competency is limited.

§ 535. It has often been made a question whether a master of a vessel is a competent witness in suits by his seamen for their wages, and conflicting decisions are found in the books; but the principle to be drawn from them all is, that his competency depends upon the same principles as that of any other witness. He is not an exception to the general rule. And in admiralty, the rules of the state laws as to the competency and incompetency of witnesses, are adopted in instance causes, with the exceptions which have been noticed."

§ 536. When the proofs of a party are imperfect, yet go far to establish his case, he may offer his own oath in corroboration of the other proofs. This practice is derived from the necessity, under the civil law, of having more than one witness. Full proof of a fact could not be made by one witness, and in many cases, manifest injustice would be the necessary result of the absence of any second witness. In such cases the party was allowed to complete his

²³ Hall's Ad. 37; *Nelson v. The U. S.* 1 Pet. C. C. R. 235; *Conk. Ad.* 640.

²⁴ *The Elizabeth & Jane*, Ware, 37; *Ryan v. Bindley*, 1 Wall, 66; *ante*, § 517 a.

²⁵ *Thurston v. Murray*, 8 Binn. 328; *The Anne*, 8 Wheat. 435; *The Independence*, 2 Curt. C. C. 350; *Conk. Ad.* 643; *Rosc. Ev.* 87; *ante*, § 517 a.

proof by his own oath. This is what is called the suppletory oath. This oath may be prayed, and is granted in all maritime causes."

By the suppletory oath the party himself testifies, "that, of his own certain knowledge, the facts stated in his allegation, (to which he offers his oath,) are true."

§ 537. In certain other cases, a party may be a witness in his own cause. The search for a paper, and its loss, may be proved by the party himself, to lay the foundation for secondary evidence. In suits for personal property, — for the contents of a trunk or package, known to no one but the party himself, — he may, from necessity, be a witness to prove the contents, the existence and situation of the trunk or package being proved by other testimony."

§ 538. There is also the *oath decisory*, which either party may tender to the other, that is, offering further decision of the cause upon the oath of his adversary. The adversary is bound either to accept the offer, or make a similar proposition in return. This is a mode of proof known to the civil law, and is said to have been practiced in admiralty, in the Massachusetts District. It is not in general use, but under the modifications which the law of evidence is now undergoing, it would not be surprising if something like it should come into use in all courts."

§ 539. The testimony being concluded, the cause is argued at that time or at a future day. The advocate of the libellant usually states the principal points of fact and of law upon which he relies, with his legal authorities. The advocate of the defendant then argues the case to the court, and the advocate of the libellant closes the discussion, and the cause is fully submitted to the judge for his decision, which may be given on the spot, in cases in which there is not a possibility of doubt, or, as is usual, it is pronounced after re-examination and deliberation."

It is customary for the advocates to submit to the court written

³⁶ Hall's Ad. 93; The David Pratt, Ware, 505; Dunlap's Prac. 284-8; Greenleaf's Ev. 294.

³⁷ Greenleaf's Ev. 204-408.

³⁸ Betts' Prac. 92, 97.

points of fact and of law, with reference to the testimony, and the authorities, and also to furnish the court, at the argument, a draft of such decree as is deemed proper.

§ 540. Allusion has already been made to the power of the court to vary, interrupt, or postpone proceedings when the cause of justice may require it. So, after the hearing of the case is concluded, on proper cause shown, the court will rescind the conclusion of the cause for the purpose of hearing further proofs. This is sometimes done at the suggestion or request of the judge himself, if, in his examination of the case, he finds that by the surprise of the party, or by his own exclusion of testimony, the case is so imperfectly before him that injustice may be done; and it is sometimes ordered on the application of the party, when there is newly discovered evidence, or when it is necessary to enable him to supply omissions.²⁹

²⁹ *Cargill v. Spence*, 2 Hag. Ecc. Sup. 146, *Le Niemen*, 1 Dod. 10; *Waller & Smyth v. Heseltine*, 1 Phil. 173; *The Fortitudo*, 2 Dod. 70; *James v. Cohen*, 3 Curteis, 786; *Smith v. Blake*, 1 Hag. Ecc. 88; *The Elizabeth*, 2 Act. 57, 58 a.; *The Vrouw*, 1 C. Rob. 168; *The Harmony*, 2 Dod. 78.

CHAPTER XXXII.

DECREE.

§ 541. THE cause being heard and submitted to the court for decision, the court pronounces its decree according to the facts and the law, in favor of the libellants, or the defendants, or some of the libellants and some of the defendants, and against the others, with or without costs, distributively, for or against any or all the parties, as justice may require. The flexibility of the admiralty proceedings in this respect, greatly conduces to the cause of justice.

§ 542. The decree made upon the hearing may be interlocutory or final. It is final when it disposes of the whole controversy, and leaves nothing further for the court to do in the cause, as when the libel is dismissed with costs or without costs, or there is a decree for a sum certain, with or without costs.

But when by the decree something still remains to be done by the court, before all the rights of the parties in the premises are fixed, and the recovering party has an order for execution, — then the decree is interlocutory, however much it may dispose of the merits of the cause.

§ 543. When the decree is against the libellant, whether the suit be *in personam* or *in rem*, the usual form of the decree is that the libel be dismissed with costs or without costs.

If the decree be in favor of the libellant, in a suit for the recovery of money, and the amount be not ascertained, it is usual to decide the principles on which the amount is to be settled, and to refer it to a commissioner to ascertain and report the amount to the court, in the same manner as on a default. In the Southern

District of New York, long experience has fully established the practice of confining the testimony on the hearing in such cases to the right of the party to recover, and of leaving the details of the amount to be proved, and the sum or balance to be ascertained before a commissioner, and reported by him to the court.¹

This not only renders it unnecessary that the time of the court should be occupied with the small details of accounts and computations, and the multifarious testimony necessary to ascertain them, but it greatly promotes the interest of parties, by enabling them to bring their proofs before the commissioner, from time to time, as convenience may dictate.

§ 544. A copy of the order of reference should be served on the commissioner and on the opposite party, — and notice should be given of the time of proceeding with the reference. The commissioner appoints the time. On the hearing, the testimony taken before the court, and any other testimony, may be given. It is introduced as on a trial, and is taken down by the commissioner. Commissioners have the usual powers of Masters in Chancery, and may administer oaths, and examine parties and witnesses in proper cases. They have also the power to summon witnesses, and compel their appearance to testify, and may adjourn the hearing from time to time, to give the parties time to put in their proofs.*

The hearing being closed, the commissioner reports to the court the result and conclusion to which he has arrived.

§ 545. The report is in the following form:

“DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT
OF NEW YORK.

“WILLIAM ROBINSON	}	<i>Commissioner's Report.</i>
<i>vs.</i>		
The Barque <i>Richard Alsop</i> , her tackle, &c.		

“In pursuance of a decretal order made in this cause, on the first day of September, in the year of our Lord one thousand eight hun-

¹ *Ante*, § 449; *Shaw v. Collier*, 18 How. Pr. 238; *vide* the forms of the Decrees in the Appendix.

² Ad. Rule 44; *The E. C. Scranton*, 2 Benedict, 81.

dred and forty-nine, by which, among other things, it was referred to one of the commissioners of this court, to ascertain and compute the amount due to the libellant, for materials and repairs, and to report thereon to this court with all convenient speed.

"I, John W. Nelson, United States Commissioner, do report, that I have been attended by the proctor for the libellant and the proctor for the claimant, and have taken and examined the testimony offered by the proctors respectively, and do find that there is due to the libellant, for the materials and repairs mentioned in the libel, the sum of one hundred and eighty-eight dollars and ten cents.

"Dated the 20th day of September, A. D. 1849.

"All which is respectfully submitted,

"JOHN W. NELSON,

"U. S. Commissioner.

"A. B., *Proctor for Libellant.*"

On the request of either party, the commissioner must report the testimony taken before him, fully, to the court, and he may always report specially.

§ 546. If either party be dissatisfied with the conclusion to which the commissioner has arrived, either on the principles of his report, or in the allowances which he has made, he may except to the report. If the report be special, and error appear on the face of the report, a written exception is not necessary.*

The following is the form of exceptions to the report :

"A. B. }
 vs. }
 C. D. }

"Exceptions on the part of the libellant, to the Report of John W. Nelson, Esquire, a United States Commissioner in this cause, dated September, 1849 :

"*First Exception.* That the said commissioner did not allow to the defendant fifty dollars and twenty-four cents, paid by him to the libellant.

"*Second Exception.* That the said commissioner allowed to the

* *Vide* The Columbus, Abb. Ad. 37; The Commander in Chief, 1 Wall. 43; *vide* other Forms of Reports in the Appendix.

libellant, seventy-seven dollars, for said repairs, beyond the contract price for the same.

“Third Exception. That the said commissioner has reported a balance of \$188 70, due to the libellant, instead of a balance of \$60, as shown by the proofs.

“A. B., Proctor for Libellant.”

When there are no exceptions, the report being filed, is confirmed on motion, without notice. When there are exceptions, the party excepting files and serves his exceptions and the cause is again put upon the docket or calendar for hearing. The following is the form of a decree thereon:

“A. B. }
vs.
 C. D. }

“This cause coming on to be heard on the exceptions to the report of John W. Nelson, Esquire, the commissioner to whom the same was referred, bearing date September 20, 1849, and the advocates for the respective parties being heard, on motion of C. D., proctor for the libellant, it is ordered: that said exceptions be overruled, and that the said report be in all things confirmed with costs; and that the libellant recover against the defendant the sum of \$188 10, with costs, and have execution therefor.”

§ 547. If the suit be in *personam*, and the decree be for the libellant for a sum certain, the usual form of the decree is, that the libellant recover against the defendant and his stipulators the amount, with costs to be taxed, and that he have execution therefor. Such decree is a lien upon the debtor's real estate, in all cases where a judgment of a state court would be; standing, in this respect, upon the same footing as a decree in equity.* In cases *in rem*, it is usual to give a decree the same form as *in personam*, and also, if the property be still in custody, to decree a condemnation and sale of the property, and that the proceeds be brought into court. If the property have been delivered on stipulation, then

* *Vide* other forms of Exceptions and Decrees in the Appendix.

^b *Ward v. Chamberlain*, 2 Black. 430; *vide* *Cropsey v. Crandall*, 2 Blatchf. 341.

that the stipulators pay into court the amount of their stipulation, within a certain time after notice of the decree, or that a summary judgment be entered against them on their stipulation, and that execution issue thereon.⁶

In a suit *in rem*, it is not usual to render a decree *in personam*, but if the case proved shows a clear right to recover *in personam*, the libellant may be permitted, after a decree *in rem*, to introduce the proper allegations *in personam*, and proceed upon them to a further decree against the person.⁷

§ 548. After the decree is made, it sometimes appears that, by accident, oversight, mistake, or misapprehension, the decree is erroneous. In such cases, the Court of Admiralty possesses the power of correcting or varying the decree.⁸ Such a variation, however, should be confined to the alteration of an error arising from the defect of knowledge or information upon a particular point in the case, and the error must be brought to the attention of the court with the utmost possible diligence.⁹

§ 549. *Costs*.—The costs in admiralty are entirely under the control of the court, and they are, therefore, often made the means of amercing either of the parties for misconduct, and are a salutary check upon mischievous litigation. They are sometimes, from equitable considerations, denied to the party who recovers his demand, and they are sometimes given to a libellant who fails to recover anything, when he was misled to commence the suit by the act of the other party. In prize and salvage cases, the property is sometimes acquitted on payment of costs by the claimant. In the Massachusetts District, in a hard case, the court decreed for a libellant for his whole demand, with costs, and then allowed a set-off of a demand against debt and costs, so that although the set-off was

⁶ As regards cases of set-off, *vide* Willard v. Dorr, 3 Mason, 161; Bains v. The James & Catherine, Baldw. 544; The Water Witch, 1 Black. 494.

⁷ Betts' Prac. 99; Boyd's Proc. 28; Conk. Prac. 774, 775.

⁸ The Fortitudo, 2 Dods. 70.

⁹ Betts' Prac. 100; 2 Chit. Gen. Prac. 538; The Monarch, 1 W. Rob. 21.

more than the debt, still the libellant had a large portion of the costs.¹⁰

It is evident that no system of rules can be laid down in a matter so purely in the discretion of the court. The general rule is, that costs follow the decree; but circumstances of equity, of hardship, of oppression, or of negligence, induce the court to depart from that rule in a great variety of cases.¹¹

Under ordinary circumstances, a demand of payment of a debt before suit brought, is so obviously required by fair dealing, that Courts of Admiralty, in the exercise of their practical equity powers, sometimes insist upon proof of such demand before a decree for costs will be given.¹²

An unconscionable demand, or a demand pursued in a vexatious or unconscionable manner, will not usually carry costs. When a libellant has put forward a principal demand, which he makes no real attempt to enforce, or which he must know to be unfounded, and recovers only a comparatively trifling amount, which would not have been resisted, it is not usual to allow him costs. Costs are never decreed against the government.¹³

§ 550. *Fees*.—Previous to the act of Feb. 26, 1853, there was no legal tariff of fees in admiralty. The fees of proctors and advocates were subject to the regulation of the courts, under their general power to regulate the practice, while those of the clerk and the marshal were in some cases prescribed by acts of Congress, and in others, were subject to the discretion of the court. There was, therefore, a great diversity, springing in some degree, from the fact that where there is no fixed rate, there will always be a strong tendency to assimilate the rates to those in the state courts of common law and equity. This defect has been cured and the practice made uniform by the Fee bill of 1853, which regulates the compensation of proctors, clerks of District and Circuit Courts,

¹⁰ *Hutson v. Jordan*, Ware, 395; *Dunlap*, Prac. 87, 102; *Edw. Ad.* 170; *The Glasgow Packet*, 2 W. Rob. 306; *The Reliance*, 2 Hag. Ad. 90.

¹¹ *The Eliza Cornish*, 26 Eng. Law & Eq. 595.

¹² *Dunlap* Prac. 91, 92; 1 Chit. Plead. 362.

¹³ *The Eliza*, 1 W. Rob. 328; 1 Notes of Cases, 305; *The Ocean*, 10 Jur. 506; 4 Notes of Cases, 571.

marshals, witnesses, commissioners and printers. The statute, and the tariff of fees in admiralty, established by it, will be found in the appendix.¹⁴

§ 551. Whenever there are several actions or processes against persons who might legally be joined in one action,—and whenever there are several libels against any vessel or cargo which might legally be joined in one libel, only the costs of one suit can be allowed, except on special cause shown, for the multiplicity of suits. And in causes of like nature, or relative to the same question, the court has full power to make any orders with a view to avoiding unnecessary costs, and especially to consolidate causes. The order to consolidate will be made only on application to the court, on notice to the other party.

If proctors, advocates, or other persons managing or conducting causes, appear to have multiplied the proceedings, so as to increase costs unreasonably and vexatiously, they may be required, by order of the court, to satisfy any excess of costs so incurred; and the court will protect the proctor from a collusive settlement to the prejudice of his right to his costs.¹⁵

§ 552. The court discourages hard and sharp practice, either in the proceedings in court, or in the negotiations between the parties. Hurrying up a suit without a demand of payment or reasonable indulgence,—refusing to listen to offers of adjustment,—making technical objections to a tender sufficient in amount,—if brought before the court, are likely to be remembered in the decree upon the question of costs. As to tender, the strict rules of the common law do not prevail in admiralty. A sincere offer of

¹⁴ Act of Feb. 26, 1853, 10 Stat. at Large, 161; *vide* the Appendix. "The expenses in Courts of Admiralty, are frequently a subject of complaint by those who are not sufficiently acquainted with the proceedings there, and the manner in which they arise. Those sums which seem most to startle by their large amount, relate solely to the custody of the property, a duty which does not devolve upon any other species of courts of justice." (The Hiram, Stewart's R. 588.) They are not higher than what are usually and voluntarily paid and received by merchants for like services. (*id.* 489.)

¹⁵ Act of July 22, 1813, 8 Stat. at Large, 21, § 3; Act of Feb. 26, 1853, 10 Stat. at Large, 161; Betts' Prac. 124; *id.* 10; The Etna, Ware, 476; Peterson v. Watson, Blatchf. & H. 487.

payment by a party who has the means of making immediate payment, has often been ruled to be a good tender, and the actual production of the money is not required, when the offer of payment is rejected. The court encourages efforts to settle, and will, under all circumstances, hold an offer to pay as equivalent to a technical tender, and a declaration in advance, that less than a certain sum will not be accepted will be considered as waiving a formal tender. The refusal of a fair tender exposes the party refusing to the loss of his costs, and, in some cases, to the payment of costs to the adverse party.¹⁶

It is the common practice of Courts of Admiralty, to give counsel fees, either in the shape of damages or as a part of the costs.¹⁷

§ 553. It is often the case, from the peculiar form of admiralty proceedings, that justice requires that costs should be apportioned, — as, when the court discriminates between parties in its decree, and some appeal and others do not, — and when the property is in custody in several causes, and the fees of the marshal for the custody and keeping of the property, have accrued for a common benefit to unconnected parties, — in such and similar cases, the court will sometimes apportion the costs.¹⁸

Costs are taxed by the clerk, on notice to the opposite party, — subject to an appeal to the judge, — and are included in and form a portion of the decree against the losing party. The taxed bill should be filed.¹⁹

§ 554. The final decree of the court being pronounced, the clerk enrolls the decree. The enrolment consists of an engrossment of the pleadings, processes, stipulations, orders and evidence in the cause, arranged in chronological order, from the libel to the final decree, constituting a complete written history of the

¹⁶ Dunlap Prac. 103, 104; Conk. Prac. 711; The Frederick, 1 Hag. Ad. R. 218.

¹⁷ The Apollon, 9 Wheat. 362; *Canter v. The American & Ocean Ins. Cos.* 3 Pet. 307.

¹⁸ The John Walls, Jr. 2 Law Rep. (new series), 24.

¹⁹ Act. of Feb. 26, 1853, 10 Stat. at Large, 161.

cause. The depositions, exhibits, and documents, if there be any, are inserted at length in the enrolment, as a part of the evidence, and the testimony of the witnesses who are examined in court is copied from the notes of testimony taken by the judge.

CHAPTER XXXIII.

EXECUTION.

§ 555. In all cases of a final decree for the payment of money, the libellant may have a writ of execution in the nature of a *fiari facias*, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the defendant or stipulator.¹

§ 556. The following is the form of an execution :

“THE PRESIDENT OF THE UNITED STATES OF AMERICA,

“*To the Marshal of the Southern District of New York,*

“GREETING :

“WHEREAS, a libel was filed in the District Court of the United States, for the Southern District of New York, [L. s.] on the twenty-eighth day of October, one thousand eight hundred and forty-three, by Elisha Burgess, libellant, against Ramon De Zaldo, and such proceedings were thereupon had, that by the judgment and decree of the said court in said cause, on the twenty-second day of July last past, the said Ramon De Zaldo was required to pay to the said libellant the sum of five hundred and two dollars and three cents, besides his costs in this suit, to be taxed, and execution was ordered therefor: And whereas, the said costs have been duly taxed at the sum of one hundred and seventy-nine dollars and fifty-nine cents, as by the records and files of said court fully appear.

“Now, therefore, we command you, that of the goods and chattels of the said Ramon De Zaldo, in your district, and, in

¹ Ad. Rule 21, 48; Cootes' Prac. 133.

default of goods and chattels of him, then of the lands and tenements in your district of which he is seized on the day you shall receive this writ, or at any time afterwards, you cause to be made, the sum of six hundred and eighty-one dollars and sixty-two cents; and further, that you have those moneys in said court, at the City Hall, in the city of New York, on the first day of June next, to render to the said libellant in satisfaction of said decree; and that you duly return to the said court what you shall do in the premises, together with this writ.

"Witness the Honorable Samuel R. Betts, Judge of the said court, in the Southern District of New York, this twenty-seventh day of May, one thousand eight hundred and forty-four, and of our independence the sixty-eighth.

"JAMES W. METCALF, *Clerk*.

"BURE & BENEDICT, *Proctors*."

Executions in favor of the United States may run throughout the United States, and, in cases of individuals, they may run throughout the state, even where there are two districts in the state; but they must, in all cases, be issued from and returnable to, the court where the decree is obtained.*

§ 557. In cases *in rem*, where there has been a decree of condemnation and sale, a *venditioni exponas* is the proper execution to issue, if the property be still in custody. If the property have been delivered on stipulation, an order is made that the stipulators perform the condition of their stipulation, and in default thereof, that a summary judgment be entered against them on their stipulation, on which an execution issues against them *in personam*.

§ 558. If the property is still in custody, and a *venditioni exponas* issues, the marshal, on proper public notice, sells the property and is bound to pay the proceeds forthwith into the hands of the clerk, to be paid into the registry of the court, to be disposed of by the court according to law.†

* Act of May 20, 1826, 4 Stat. at Large, 184.

† Ad. Rule 41.

The following is the form of the writ :

"Southern District of New York, ss.

"THE PRESIDENT OF THE UNITED STATES OF AMERICA,

"To the Marshal of the Southern District of New York,

GREETING :

"WHEREAS, a libel of information was filed in the District Court of the United States, for the Southern District [L. s.] of New York, on the first day of March, in the year of our Lord one thousand eight hundred and forty-nine, against the ship *Rover*, her tackle, apparel, and furniture; praying that the same may be condemned and sold, for the causes alleged in the said libel of information. And whereas the said ship has been attached by the process issued out of the said District Court, in pursuance of the said libel of information, and is now in custody by virtue thereof: and such proceedings have been thereupon had, that by the final sentence and decree of the said court, in this cause made and pronounced, on the first Tuesday of June, one thousand eight hundred and forty-nine, the said ship, her tackle, apparel, and furniture, are condemned and ordered to be sold by you, the said marshal, after giving six days' notice of such sale, according to law. Therefore you, the said marshal, are hereby commanded to cause the said ship, her tackle, &c., so condemned and ordered to be sold, to be sold in manner and form, upon the notice and at the time and place by law required. And that you have the moneys arising from such sale in said court, at the City Hall, in the city of New York, on the first Tuesday of July, one thousand eight hundred and forty-nine, and that you then pay the same to the clerk of the court; and have you also then and there this writ.

"Witness, the Honorable Samuel R. Betts, Judge of the said court, at the city of New York, in the Southern District of New York, this twenty-fourth day of June, in the year of our Lord one

thousand eight hundred and forty-nine, and of our independence the seventy-third.

"JAS. W. METCALF, *Clerk.*

"C. L. BENEDICT, *Proctor.*"

On which the marshal returns as follows :

"In obedience to the above precept, I have sold the said ship Rover, her tackle, apparel, and furniture, and the proceeds of such sale, amounting to thirteen thousand one hundred dollars, I have paid to the clerk of this court as I am above commanded.

"Dated this 15th day of July, 1849.

"HENRY F. TALLMADGE, *U. S. Marshal.*"

§ 559. It is a great irregularity for the marshal to distribute the money, or any part thereof, to the parties, even according to the decree. His function, under a *venditioni exponas*, is solely to sell the property for cash, and bring the proceeds of the sale into court, deducting nothing but the expenses of the sale. The flexibility of admiralty process, of which mention has been often made, renders it highly improper for any of the officers of the court to meddle with that which may, in the end, be materially modified by the court.*

It often happens that there are liens upon the property sold, accruing while the property is in custody of the law,—such as wharfage, storage, labor, &c. These the marshal has no right to pay without the order of the court; much less would he have the right to discharge previously existing liens of any description.*

§ 560. All moneys paid into the hands of the clerk, to be deposited in the registry of the court, must be immediately deposited, in the name of the court, in some bank designated by the court as the depository of the registry; and that account must always be kept by the bank, subject to the condition that no money shall be drawn out, except by a check signed by a judge of the court, and countersigned by the clerk, stating on whose account and for whose use it

* The Collector, 6 Wheat. 194; *ante*, § 398; The Phebe, Ware, 854, 858.

* The Phebe, Ware, 854, 859; The Collector, 6 Wheat. 194.

is drawn, and in what suit, and out of what fund, in particular, it is paid.⁶

It is the duty of the clerk to keep a regular book containing a memorandum and copy of all the checks so drawn, and the dates thereof, and it is his duty, at every term, to report to the court in detail, the moneys in the registry. After the proceeds of a sale are in the registry, there not unfrequently arise grave questions as to the matter of distributing the funds; for, in admiralty, the principles of distribution vary according to circumstances. They are sometimes distributed according to the order in which the suits were commenced, sometimes in the order in which the liens were created, sometimes in the reverse of that order, and sometimes to all alike, ratably. The order of distribution, or marshalling the proceeds, is settled by the court according to the legal priority, although the court sometimes refers it to the clerk to report the claims and their order of preference. In claims of the same rank, the one first commencing his proceeding is preferred in the distribution. The party first seizing, holds the property against all other claims of no higher character. Debts holding a higher rank are paid in full to the exclusion of those of lower rank. The clerk then gives the parties a hearing and makes up his report in writing, to which any party may take exceptions, in the same manner, as to other such reports, and the matter is thus brought before the court for argument and final and deliberate adjustment.⁷

§ 561. *Proceeds in the Registry.*— Any person having an interest in any proceeds in the registry of the court, may, by petition and summary proceedings, intervene for his interest for a delivery of them to him, notwithstanding the decree; and upon due notice to the opposite party, if any, the court will proceed summarily to hear and decide thereon, according to law and justice. If the party fail in his claim, or desert it, the court may award costs against him.⁸

⁶ Ad. Rule 42.

⁷ *Blaine v. The Charles Carter*, 4 Cranch, 328; *The Paragon*, Ware, 322; *The Phebe*, id. 359; *The Globe*, 1 Blatchford, C. C. R. 427; *The Adele*, 1 Benedict, 308; *Boyd's Proc.* 45.

⁸ *The Phebe*, Ware, 359; *Brackett v. The Hercules*, Gilp. 189.

§ 562. *Remnants and Surplus.* — It is often the case in proceedings *in rem*, that after a condemnation and sale, and payment of the libellant, there remains in court an unappropriated balance of the proceeds; this is sometimes called remnants and surplus. The party entitled to the whole or any portion of the residue, can obtain it only by petition or motion to the court.

The proceeds of property which was affected by a lien, are still affected by it, in whosoever hands they may be. The regular sale of property, under a decree of the court, gives a good title against all the world, and hence the proceeds are often subject to demands which were not embraced in the suit; and the court, on motion or petition, will adjudicate upon the rights of parties claiming an interest in the remnants and surplus.*

The party may also proceed against remnants by libel and monition in a new suit, if he have a lien upon them.¹⁰

The notion prevailed for a while, that a party might enforce, against proceeds or remnants and surplus in the registry, a demand which he could not enforce against the property by an original suit. It is now, however, well settled that a party will not be allowed to resort to the proceeds or remnants of the property, to enforce a demand which was not a lien upon the property, and enforceable in the admiralty.¹¹

* *Brackett v. The Hercules*, Gilp. 189; *Harper v. A New Brig*, id. 549; *The L. B. Goldsmith*, 1 Newb. 123; *McLane v. The U. S.* 6 Pet. 404.

¹⁰ *Andrews v. Wall*, 3 How. 568; *vide The Sybil*, 4 Wheat. 98; *Keen v. The Gloucester*, 2 Dal. 36.

¹¹ *The Neptune*, 3 Hag. Ad. 129; *Buxton v. Snee*, 1 Ves. Sen. 154; *Ed. Ad. Jur.* 99-108; *Mutual Safety Ins. Co. v. Cargo of The George*, Olc. 89; *Gardner v. The New Jersey*, Pet. Ad. 223; *vide The Monte Allegre*, 9 Wheat. 616; *contra, The Stephen Allen*, Blatchf. & H. 191.

CHAPTER XXXIV.

PETITIONS — MOTIONS — ORDERS — RULES — NOTICES.

§ 563. THERE are proceedings of an independent character connected with the powers of a court of admiralty, which are not properly actions or suits. These are originally commenced by petition, and carried to their final determination by the simple orders of the court, without any formal suit or process.¹

Such are proceedings for a survey, on the application of seamen alleging unseaworthiness,—or, on the application of a master to authorize a sale by him, as master, or other proceedings, where a final decree or adjudication, *inter partes*, is not sought for, but where the aid of the court is sought, to authenticate, or give solemnity and impartiality to proceedings authorized by statute and by the general admiralty law. And whenever a party desires the order of the court, regulating, correcting, modifying, or arresting the proceedings in the cause,—or authorizing any incidental, ancillary, or provisional proceeding, he may apply to the court by petition or motion.²

§ 564. If a petition be resorted to, the petitioner must state briefly and clearly the facts on which the demand for the relief is founded, either by a full statement, or by reference to the pleadings, depositions or other documents, and must close with a prayer for the relief desired, so framed as to inform the court and the opposite party, if there be one, of the relief demanded in the premises. The petition must be sworn to by the petitioner. A copy must be served on the proctor of the opposite party, with such notice of the time of presenting the same as is required by the rules of the court.

¹ Dunlap's Prac. 129; Betts' Prac. 117, 119.

² Seaman's Act, § 8; *ante*. § 299; Betts' Prac. 117; Dunlap's Prac. 129.

§ 565. In case a motion is resorted to, the facts must be brought before the court in affidavits, or by proper reference to the pleadings, depositions, or other documents.

Copies of the affidavits must be served, with a notice containing, like the prayer of the petition, an intelligible statement of the relief or order which the party desires.

The other party produces, at the hearing, without service of copies or notice, such proofs by affidavits or other documents, as may best answer his purpose.

On these two sets of papers, the court usually disposes of the matter, unless in the exercise of a sound discretion, time and liberty are given, by the court, to the moving party, to introduce rebutting or explanatory proofs. This is rarely done except in cases of urgent equity, of hardship or of surprise.

Wherever circumstances authorize or require an *ex parte* motion or petition, as is sometimes the case, the court always requires, not only full proofs to justify the order asked for, but also proof of diligence in endeavoring to give notice to the other party, if it be a matter of which he is entitled to notice.

§ 566. In the English Admiralty, the court, in most cases, gives its directory orders the form of a writ, under seal of the court. They are sometimes called commissions, and sometimes warrants; thus, there are commissions to take bail, to appraise, to sell, &c. — which are moved for by the party, ordered by the court, and issued by the clerk. In the American Admiralty Courts, with more simplicity and directness, the order of the court, made on motion or petition, takes the place of the commission or warrant, a copy certified by the clerk being sufficient evidence of the direction of the court.*

There is, however, no legal objection to the more cumbrous and expensive forms of the English practice.

§ 567. There are no common motions, orders and rules, in admiralty. The rules of court may sometimes authorize orders, of course, but they are always to be entered by the clerk, as made in

* Betts' Prac. 43, 44; Dunlap's Prac. 177.

court, either as of the stated term of the court, or as of a special court of that day. There are many chamber orders, mere mandates of the judge, staying proceedings for a provisional purpose, extending or enlarging time, directing the issue of process, fixing the amount of bail, &c. These are made *ex parte* by the judge, on affidavit showing the necessity. They are not entered in the minutes of the court, but are served on the opposite party, by delivering him a copy. If he be of opinion that the order has been granted improvidently, or on mistaken suggestion, he may apply for a hearing upon it, on an *ex parte* order to show cause why it should not be vacated.⁴

§ 568. Each court prescribes what notice shall be given of the various steps in a cause to be brought before it. The different systems of common law and equity practice, in the courts of the states, which prevail in the courts of the United States, in common law and equity causes, have caused, in some proceedings, diversity, where it ought not to exist. In the Southern District of New York no causes are put upon the calendar, at any term of the court, except such as the parties shall notify the clerk to put upon the docket, and shall also notify the opposite party that they are to be so put on. In other districts, the clerk, from his own registers, entries, and files, makes up a docket or list of all the causes at issue, and no notices are given, by or to any one, on the subject. Each party is expected to attend court, and when his causes are called, either bring them on for trial, or, by the order of the court, or the consent of his adversary, have them continued; or if his adversary be not present, have them dismissed or decided by default. This latter practice is the proper admiralty practice. It prevails in the Supreme Court of the United States, and might well be prescribed by that court for all the District and Circuit Courts in admiralty causes.

All notices in the Southern District of New York, are notices of four days. In all matters except the hearing of causes, although the regular notice is four days, the court will, on sufficient cause shown, order a shorter notice.⁵

⁴ *Vide* precedents in the appendix.

⁵ *Vide* the Rules.

All notices and other papers to be served in a cause are to be served on the proctor, instead of the party, if a proctor have appeared in the cause.

§ 569. Each District Court and each Circuit Court may, by general rules, regulate their practice, in such manner as they shall deem most expedient for the due administration of justice, in suits in admiralty, in all cases not provided for by the general admiralty rules of the Supreme Court,—and such rules exist in most, if not all the districts, both in the Circuit Courts and the District Courts. Those of both courts, in the Southern District of New York, in admiralty cases, will be found in the appendix.*

* Ad. Rule 46; Process Act of 1792, § 2.

CHAPTER XXXV.

ADMIRALTY AND MARITIME CRIMES.

§ 570. THE grant in the constitution, of judicial power to the government of the United States, in all cases of admiralty and maritime jurisdiction, is without limitation, and, of course, embraces criminal, as well as civil cases. It is under this grant alone, that the federal government has the right to punish a large class of offences, whose punishment is provided for in the acts of Congress in relation to crimes and offences on the high seas. In these acts, the various offences are not classed or described as admiralty cases, but they are indiscriminately arranged with other descriptions of crimes subject to the federal jurisdiction. They will be found in the Crimes Acts of 1790, of 1804, of 1820, of 1825, and of 1835, in various sections, providing for the punishment of crimes and offences committed "on the high seas, or in any arm of the sea, or in any river, harbor, creek, basin or bay, or in any other waters within the admiralty and maritime jurisdiction of the United States." The power of the federal government to punish these offences, is derived from the admiralty and maritime grant in the constitution; and of all of them which are not capital, the District Court has jurisdiction. If committed within any district, the trial must be in that district; and if upon the high seas, out of a district, then in the district where the offender is apprehended, or into which he may be first brought.¹

Those who contend for the narrow jurisdiction of the admiralty, have not always considered what would be its effect upon the criminal jurisdiction of the general government.

¹ Const. Art. 3, § 2, 1 Stat. at Large, 112; 4 id. 115, 777; 5 id. 567; 6 Amend. to the Const. U. S.; *Vide* The U. S. v. Wilson, 3 Blatchf. 435; The U. S. v. Bird, Sprague, 399.

§ 571. Under the general provision that, in admiralty and maritime cases, the mode of proceeding should be according to the usages of Courts of Admiralty, the trial of maritime offences must have been according to the usage of admiralty courts,² had not the constitution and amendments otherwise provided :

“The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed ; but when not committed within any state, the trial shall be at such place or places as the Congress may, by law, have directed.”

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger.”

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district where the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.”

§ 572. The practical operation of these provisions has been to make the practice of the admiralty, in criminal cases, the same as the practice of the courts of common law, in like cases. The cases are none the less cases of admiralty and maritime jurisdiction, although, like criminal cases in the English Admiralty, they are tried before a jury, and from the beginning, conducted after the manner of trials at common law, in criminal cases. The proper effect of those provisions is not, however, to adopt in such cases the practice of the state courts, but the practice must be according to the usage of admiralty courts, subject to the

² Act of May 8, 1792, § 2.

³ Const. Art. 3, § 2.

⁴ 5th Amendment.

⁵ 6th Amendment.

limitations of the constitution, the amendments, and the acts of Congress.*

§ 573. The powers usually exercised by justices of the peace and other magistrates in the states, of issuing warrants for crimes, making preliminary examinations, and committing, are usually exercised by the United States commissioners, by virtue of the act of August 23, 1842, which will be found in the Appendix.'

* Conk. Treat. 395.

' 5 Stat. at Large, 516.

CHAPTER XXXVI.

LIMITATIONS.

§ 574. THERE is no fixed rule of limitation of the time in which admiralty suits shall be brought, except in the cases of criminal suits, and suits quasi criminal. Statutes of limitation are founded entirely on public policy, rather than on sound principle. Indulgence to a debtor, and delay in prosecuting him, would seem not to form any good reason why the creditor should lose his debt. The policy of all nations has, however, fixed limits to that indulgence, in certain cases, longer in one nation than in another, and almost as various as the classes of cases. These limitations have usually been subject to exceptions, one of which is in favor of persons beyond sea, and all of which have their foundation in the inconvenience or impracticability of sooner enforcing the demand. .

§ 575. If the omission to enact any statute of limitations, in civil cases of admiralty and maritime jurisdiction, sprang from the peculiar character of the cases, and the pursuits of many of those employed in maritime commerce, a large portion of their time in foreign countries, on the seas, and beyond the seas, urged by the strongest incentives of commercial necessity, as well as of public policy, to pursue their avocations without interruptions, and without being the masters of their own steps, it would not be the only instance in which the founders of the republic, and the framers of her first system of laws, silently manifested their remarkable forecast and practical wisdom. I cannot help thinking that, in such cases, the matter of limitations is best left as it is, to the discretion of the court, which can best judge, in view of all the circumstances, whether the demand be so stale as to be considered neglected and abandoned, — availing itself of that principle

of limitation in the administration of every system of jurisprudence, which is derived out of the nature of things, and which is admitted in the universal maxim, "*Vigilantibus non dormientibus subveniunt leges.*" This is the constant practice of courts of admiralty. This discretion of the court is not mere caprice, nor will, nor arbitrary power. It is the sound legal discretion of cultivated reason, in which the circumstances of the parties, of the property, and of the transaction, the wants and convenience of commerce, the demands of public policy, and, most especially, the analogies of the local laws of limitation, are fully to be considered and carefully weighed.¹

§ 576. In criminal and penal cases, and cases of forfeiture, there are limitations fixed by the acts of Congress. No person shall be tried for treason, or other capital offence, wilful murder and forgery excepted, unless the indictment for the same be found by a grand jury within three years next after the commission of the offence; nor shall any person be prosecuted, tried, or punished for any offence, not capital, unless the indictment or information for the same be found or instituted within two years from the time of committing the offence: this does not, however, extend to persons fleeing from justice.²

§ 577. For a large number of offences against the revenue laws, ships and vessels and other property are specifically forfeited, and the forfeiture is enforced by proceedings *in rem* in admiralty. By the Custom-House Act of March 2, 1799, § 89, prosecutions for those forfeitures, as well as actions against persons for violations of that

¹ *Brown v. Jones*, 2 Gall. 477; *Willard v. Dorr*, 3 Mason, 91; *The Rebecca*, 5 O. Rob. 96; *The Mentor*, 1. O. Rob. 180; *The Huldah*, 8 id. 235; *The Susanna*, 6 id. 51; *The Jonge Jan*, 1 Dod. 453; *The Sarah Ann*, 2 Sumn. 206; *Coppin v. Gray*, 1 Yo. & Col. 209; *Ferguson v. Fyffe*, 8 Clark & Fin. 121; *The John*, 2 Dod. 338; *The Eastern Star*, Ware, 186; *Edw. Jur.* 149; *Stat.* 4 Anne, C. 16; *The Clifton*, 3 Hag. 117; *The Rapid*, id. 419; *Wagner v. Baird*, 7 How. 234; *Cootes's Prac.* 6; *The Saracen*, 2 W. Rob. 451; *S. C.* 6 Moore, 56; *Harmer v. Bell*, 22 Eng. Law & Eq. 72; *Saunders v. Buckup*, Blatchf. & H. 264.

² Crimes Act of April 30, 1790, § 81; *Adams v. Woods*, 2 Cranch, 336; *The U. S. v. Mayo*, 1 Gal. 397.

act, are limited to three years next after the penalty or forfeiture was incurred; but, by the act of March 26, 1804, § 3, the limitation in such cases was extended to five years. The same period of limitation applies to prosecutions for the slave trade, by the act of April 20, 1818, § 9. By the act of March 3, 1863, § 14, such provisions of the acts of March 2, 1799, and March 26, 1804, as impose any limitation upon the commencement of any action or proceeding for the recovery of any fine, penalty, or forfeiture, incurred under the duty laws, are repealed.*

* Act of March 2, 1799, § 89, 1 Stat. at L. 679; Act of March 26, 1804, § 3, 2 Stat. at L. 290; Act of April 20, 1818, § 9, 3 Stat. at L. 450; Act of March 3, 1863, § 14, 12 Stat. at L. 741.

CHAPTER XXXVII.

THE CIRCUIT COURTS OF THE UNITED STATES.

Their Jurisdiction and Practice in Admiralty and Maritime Cases.

§ 578. It has been already stated, that the Circuit Courts have no original civil admiralty jurisdiction. It has also been shown in what cases, and how, original causes in the District Court may be transferred to the Circuit Court for original hearing. The Circuit Court has also, concurrently with the District, a large criminal jurisdiction in admiralty cases. In all these instances the practice in the Circuit Court is like that in the District Court in like cases, and is set forth in the preceding sections of this work, and to them the reader is referred. The admiralty rules of the Supreme Court apply to the Circuit, as well as the District Court. The practice of the Circuit Court, in cases of appeal, however, should be stated.¹

§ 579. *Appeals.*—From all final decrees in a District Court, an appeal, when the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars, is allowed to the Circuit Court next to be holden in the district.

The appeal can be taken only to a final decree. An interlocutory decree,—an incidental decree,—a decree in a matter of discretion, cannot be appealed from. The appeal from the final decree, however, brings up for review all the orders, decrees, and proceedings in the cause.²

§ 580. It is of great importance to the due administration of

¹ The U. S. v. Holliday, 3 Wall. 407; *ante*, §§ 320-323.

² Act of March 3, 1803; *Marine Ins. Co. v. Hodgson*, 6 Cranch, 206; *Welch v. Mandeville*, 7 id. 152; *The Apollon*, 9 Wheat. 376; *Chirac v. Reinicker*, 11 id. 280; *Brockett v. Brockett*, 2 How. 233; *The Hollen*, 1 Mason, 431; *Mordecai v. Lindsay*, 19 How. 199; *Montgomery v. Anderson*, 21 id. 386.

justice, that causes should not be carried up in fragments, upon successive appeals. It would occasion very great delays and oppressive expenses. It was to prevent such a course, unquestionably, that Congress limited appeals to final decrees, and in the same spirit, the courts have always held, that if one party appeals and the other party does not also appeal, he shall be bound by the decree of the court below, and also of the court above, and will not be permitted to ask that the decree be modified in his favor, nor to bring another appeal. We hence derive the true criterion of a final decree. The final decree is not that which decides upon the substantial merits of the action, but that which completes the decretal action of the court in the cause; and an appeal will bring up for review, at once, all that the court has done in the cause, so far as it may injuriously affect the appellants. We also perceive the proper functions of an appeal, which is to bring up for rehearing and readjudication the whole action of the court below, so that the court above may, in all things, do what the court below should have done, or remand the cause, with directions which shall render another appeal unnecessary.³

If, therefore, there remain to be made any order,—for costs,—for confirmation of a report,—for distribution, or other order, which is but a consequence of the decree on the merits, the appeal can not be entered before such order is made,—that is the final decree,—not till then is it in a state for execution, without further action of the court below.⁴

§ 581. The matter in dispute must be fifty dollars, exclusive of costs, or an appeal will not lie. If, however, the amount authorizes an appeal, the question of costs is subject to review, as well as any other question.⁵

When the libellant appeals, the amount of the matter in dispute is the amount demanded in the libel.⁶ If there be no amount

³ *Canter v. The American and Ocean Ins. Cos.* 3 Pet. 318; *The Santa Maria*, 10 Wheat. 431, *The Palmyra*, id. 502; *Chace v. Vasquez*, 11 id. 429.

⁴ *The Santa Maria*, 10 Wheat. 431; *The Palmyra*, id. 502; *vide Craighead v. Wilson*, 18 How. 199; *Wabash and Erie Canal v. Beers*, 1 Black, 54.

⁵ *The U. S. v. The Malek Adhel*, 2 How. 210; *Canter v. The American and Ocean Ins. Cos.* 3 Pet. 307; *Shirley v. Titus*, 1 Sum. 447; *vide Greigg v. Reade, Crabbe*, 64; *McGinnis v. Carlton*, Abb. Ad. 570.

⁶ *Gordon v. Ogden*, 8 Pet. 34.

specifically demanded in the libel, the party will be permitted to show the amount by affidavit or otherwise. The courts, in deciding upon the question of amount, lean with a liberal construction in favor of the right of appeal, and if the recovery can, by possibility, be more than fifty dollars, an appeal will lie.⁷

Whenever the rights of the parties are separate, although they be co-libellants or co-defendants, and the decree is distributive, as in cases of salvage, mariners' wages, and similar instances, the aggregate amount does not give the right to appeal, but no party will be allowed to appeal unless the amount in dispute, so far as he alone is concerned, exceeds fifty dollars.⁸

When the defendant or claimant appeals, the amount decreed against him is the matter in dispute.

Whenever one party appeals, the other party may appeal, so as to bring up for review the whole decree. But either party may appeal from the whole, or from any part of the decree.

§ 581 *a*. On an appeal by one party from a part only of the decree, the whole decree is brought up for review, although but a part is appealed from; and after a decision of the appeal, the Circuit Court executes the whole decree and has no power to remit the proceedings to the District Court.⁹

§ 582. The appeal from the District Court must be made to the Circuit Court next to be holden in the district. The time limited for an appeal is, therefore, very brief. All appeals from the District Court to the Circuit Court must be made while the court is sitting, or within such other period as shall be designated by the District Court, by its general rules, or by an order specially made in the particular suit. If an appeal be not so made, the decree may be executed.¹⁰

⁷ *Williamson v. Kincaid*, 4 Dal. 20; *The U. S. v. The Union*, 4 Cranch, 216; *Cooke v. Woodrow*, 5 id. 18; *Wise & Lynn v. The Columbian Turnpike Co.* 7 id. 276; *Gordon v. Ogden*, 3 Peters, 33; *The U. S. v. Eighty-four Boxes of Sugar*, 7 id. 458; *Davis & Brooks v. The Seneca*, Gilp. 37.

⁸ *Stratton v. Jarvis*, 8 Peters, 4; *Oliver v. Alexander*, 6 id. 143.

⁹ *The Roarer*, 1 Blatchf. C. C. R. 1; *Montgomery v. Anderson*, 21 How. 386.

¹⁰ Ad. Rule 45; *Norton v. Rich*, 3 Mason, 443; *The U. S. v. The Glamorgan*, 2

§ 583. An appeal should be made in writing, and filed in the District Court. No particular form of words is necessary to constitute an appeal. It will be held sufficient if it show clearly that the party appeals from the decree.

In the Southern District of New York, the matter of appeals has assumed more regularity and form than in some of the other districts, and the practice there has been found conducive to a full rehearing of the cause, with the greatest economy of time, labor and expense. The practice in that district, therefore, will be alone stated. In any district where the practice is different, a recurrence to the rules of the courts there will show in what respects this practice is to be modified or departed from.

The convenience of parties has been usually found to require that a few days' time should be allowed, as a matter of course, in which the party may consider whether he will appeal. In England fifteen days are allowed. In the civil law practice, the time was ten days. By the rules of the District Court, ten days are allowed from the time when the decree is in a condition to be executed, without further proceedings in that court."

§ 584. So far as the District Court is concerned, a brief notice in writing to the clerk of the court, and to the opposite proctor, is a sufficient notice of the appeal, to operate as a stay of proceedings till security may be put in.

This notice is as follows:

"DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

"A. B.
vs.
C. D.

}

"SIR,—The defendant appeals from the final decree of the court in this cause, to the next Circuit Court.

"Dated Oct. 1, 1848.

"E. T., *Proctor for Deft.*

"To J. W. M., Esq., *Clerk.*"

Curt. C. C. 236; The U. S. v. Certain Hogsheads of Molasses, 1 id. 276; The New England, 3 Sum. 495.

"D. C. Rule, 151, 152.

This notice served on the clerk and the opposite proctor, will stay the execution of the decree, till the expiration of the time to put in the necessary security on the appeal, which is required by the rules of the District Court.

§ 585. Whenever an appeal is entered the appellant must give security for damages and costs within ten days after the appeal is entered, and if security is not given within that time, the decree may be executed, as if there had been no appeal, unless the court allow further time. The appellant must give four days' notice to the adverse party, or his proctor if he have one, of the time and place of giving the stipulation, and of the persons proposed as sureties, with their additions and description. The sureties must then justify, and submit to an examination as to their sufficiency. They must stipulate in double the decree for damages or debt and costs, when the defendant appeals, and in such sum as may be fixed by the court, if the appeal be by the libellant."

The rules of the Circuit Court require that there should be an appeal in writing, more formal than the notice of appeal which has been mentioned, and that it should be returned with the other documents, as an important paper in the court above. It should briefly state the allegations and prayer of the parties in the proceedings in the District Court, and the decree, with the time of rendering the same."

§ 586. It is the well settled practice of the admiralty, that in the appellate court, the parties are permitted to allege what was not alleged, and to prove what was not proved, in the court below. This, however, must be taken with the limitation that new causes of action cannot thus be introduced in the appellate court, otherwise an appeal might be made the means of giving original jurisdiction to an appellate court."

" *Vide* the form of the stipulation in the Appendix, *h* 6 & 8.

" C. C. Rule 118.

" *Ante*, § 483; *The Anonymous*, 1 Gall. 22; *The Boston*, 1 Sum. 328; *The Sarah Ann*, 2 *id.* 206; *Cushman v. Ryan*, 1 Story, 336; *Carrigan v. The Charles Pitman*, 1 Wall. C. C. 307; *Clerke Prax.* tit. 60; *Hall Ad.* 110.

The effect of this practice has been to present appeals in three classes :

1. Appeals for a mere review of the action of the court below in which, on the same pleadings and the same proofs, the cause is to be re-argued in the court above.

2. Appeals in which, on the same pleadings or allegations, the cause is to be re-tried, on the testimony in the court below, and other testimony, introduced for the first time in the court above.

3. Appeals in which the whole proceeding is reconstructed, new pleadings or allegations are put in, and the cause proceeds in all respects as though it had never been heard in the court below.

§ 587. It is obvious that the course of proceedings in the court above, as well on the part of the court as of the parties, must vary materially, as the appeal shall be of one or the other of these classes. Appeals are usually of the first or second class. Those of the third class are very rarely, if ever, necessary or expedient.

The appellant must, therefore, in his appeal, state what course he intends to pursue in this behalf in the court above, and he shall be concluded by the appeal.

This appeal must be signed by the party or his proctor, and filed in the District Court, within the time limited for appealing, and with it must be filed an affidavit of service of a copy of it on the proctor of the appellees in the court below."

Nothing further is necessary to be done to complete the appeal. No answer need be made to the appeal, or issue taken upon it, and no process or order is necessary to bring the appellees into the Circuit Court. The appellant must, however, proceed to have the necessary documents transcribed without delay, and within twenty days, and by the first day of the term of the Circuit Court next after the appeal, unless a longer time is allowed by the judge."

§ 588. Within four days after the documents are completed by the clerk of the District Court, the appellant must cause them to be filed in the Circuit Court, which is then deemed to be possessed

15 C. C. Rule 119, 120; *vide* the form of an appeal in the Appendix.

16 C. C. Rule 118, 124, 127.

of the cause. If the appellant do not have the documents thus returned, the appeal is not received, and is deemed deserted, which may be certified to the court below, and thereupon that court may proceed to execute its decree.¹⁷

After the Circuit Court is possessed of the cause, it is no longer in the District Court, and that court cannot make any order in relation to it.¹⁸

If on the appeal it shall not be intended to make new allegations, nor to pray different relief, nor to seek a new decision of the facts, then the pleadings, evidence, and decree, with the stipulations and the clerk's account of the funds in court, and the appeal, must be certified to the Circuit Court with the appeal,—and, in all cases, the statement of facts agreed upon by the parties, or settled by the district judge, and on file, according to the practice of that court, may be certified in place of the evidence at large.¹⁹

If it be intended to seek only a new decision of the facts, then the pleadings, with the stipulations and the clerk's account of the funds in court, and the exhibits and depositions, and the appeal, are alone to be certified.

If it is intended to put in new pleadings and seek new relief, then the return will contain only the appeal, copies of the process and return, the clerk's account, and the depositions, exhibits, and stipulations in the cause.²⁰

The return or record sent from the court below to the appellate court, is called *apostles*, from the Greek *αποσπελλειν*, to send away.²¹

§ 589. By an appeal from the District Court to the Circuit Court, the Circuit Court becomes possessed of the cause, which is no longer in the District Court. The Circuit Court alone can make orders in it, and executes its own judgment without any interven-

¹⁷ C. C. Rule 124, 125.

¹⁸ *Davis & Brooks v. The Seneca*, Gilp. 40; *The Grotius*, 1 Gal. 508; *The Collector*, 6 Wheat. 194.

¹⁹ *Gloucester Ins. Co. v. Younger*, 2 Curt. C. C. 322.

²⁰ C. C. Rule, 121, 122, 123; but see Ad. Rule 53, by which the C. C. Rules may be repealed or modified. *Vide* the forms in the Appendix.

²¹ *Consett Prao*, 193; 2 *Brow. Civ. Ad.* 438.

tion of the District Court; and, on the other hand, if a further appeal be had, to the Supreme Court, that court does not execute its own judgments, but sends a special mandate to the Circuit Court, to award execution thereon. The regular order of proceedings, therefore, requires that the property should follow the cause into the Circuit Court, not only with a view to its own action, but also that of the Supreme Court."

If, therefore, there be a vessel or other property in custody of the marshal, he should, by a proper order, be directed to hold it, subject to the order of the Circuit Court instead of the District Court. If there be funds in the District Court, they must be transferred to the Circuit Court, and deposited subject to its order, — and the original stipulations, taken in the District Court, must be sent up to the Circuit Court. In no other manner can the cause be entirely in the Circuit Court, and that court have the power to make a full decree, and execute its own decree. For in the District Court, as well as in the Circuit Court, all parties and stipulators are bound by the decree in the cause, and it operates directly upon the persons and property. The Circuit Court will, if necessary, by mandamus, compel the district clerk to make the necessary return."

As soon after final decree as you have determined to appeal, and within the term allowed, give notice of appeal to the clerk of the District Court and the opposite proctor. Give the necessary stipulations. Prepare, with care, the formal appeal. Serve copy on opposite proctor, and file the original in the district clerk's office, with affidavit of service. Order the necessary transcripts and return to be made to the Circuit Court.

See that they are actually returned and filed in the Circuit Court in due time.

See that the property, money, and stipulation, are also transferred to the Circuit Court.

²² The Collector, 6 Wheat. 194, and cases cited; *Montgomery v. Anderson*, 21 How. 386; *Hayford v. Griffith*, 3 Blatchf. 34.

²³ C. C. Rule 129; *Jennings v. Carson*, 4 Oranch, 26; *vide* the form in the Appendix, p. 705.

§ 590. The enrolled decree remains in the District Court, as the decree of that court, and, till reversed, it is binding upon all the parties, as an adjudication of the right. It is suspended, or stayed in operation, during the pending of the appeal.

It is properly said, in regard to admiralty cases, that an appeal suspends the sentence below altogether, and the language of some of the cases has been thought to justify the opinion, that an appeal entirely destroys the effect, if not the operative existence, of the decree appealed from. The extent of the principle, however, seems to be that, notwithstanding the decree below, the cause is to be heard and decided in the appellate court, according to the law, as it exists at the time of the hearing, in the appellate court, in the same manner as if no sentence had been pronounced. In other words, the question is not in the court above, whether the court below erred, but whether, by the existing law, the decree ought to stand, or be modified or reversed.²⁴

§ 591. The appeal itself suspends the sentence below, and prevents its execution, — but should the District Court proceed after an appeal, the Circuit Court will, on notice and hearing the parties, issue an inhibition to the District Court.²⁵

Should any District Court entertain jurisdiction of any cause of admiralty and maritime jurisdiction, of which it had properly no jurisdiction, the defendant is not compelled to take the slow and expensive process of an appeal to arrest the jurisdiction, but the Supreme Court of the United States has power to issue a prohibition.²⁶

§ 592. The appeal being perfected, and the proper documents returned to the Circuit Court, the proctor of the appellant should notify the proctor of the appellee, that the same are so returned. The proctor of the appellee must then enter his appearance in the Circuit Court without delay, and within the first two days in the term next after he is notified that the return is filed; if not, the case may be brought on by the appellant.

²⁴ *Yeaton v. The U. S.* 5 Cranch, 281; *The U. S. v. Preston*, 3 Pet. 57; *Conk. Treat.* 2d ed. 157.

²⁵ *Penhallow v. Doane's Administrators*, 3 Dallas, 54; C. C. Rule 126, 128; *Jud. Act of 1789*, § 18; *vide* the forms in the Appendix.

The entry of appearance is by a written notice to the clerk of the Circuit Court, that the proctor appears for the appellee, and requests that his appearance be entered."²⁶

§ 593. If the appeal is of that kind that requires new pleadings, the libellant files a new libel in the Circuit Court, within the time limited by the court, and the adverse party answers in the same manner, or his default may be taken, and the cause proceeds like an original cause in the District Court. The written depositions and answers to interrogatories, and other written testimony from the District Court, may be used in the Circuit Court. But no report of testimony given *viva voce*, in open court, in the District Court, will be considered by the Circuit Court as evidence, unless it shall appear, on its face, to have been taken down in the same manner as in jury trials in common law issues, and not *verbatim*, as in depositions *de bene esse*. Further proof must be by deposition, taken before some commissioner appointed by a Circuit Court, with notice to the adverse party, unless the court, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such deposition upon written interrogatories and cross interrogatories."²⁷

§ 594. In the Circuit Court the cause proceeds like a new trial of an original cause. In that court, as in the District Court, both parties are actors, and may give notice of hearing, and bring on the cause. And the libellant opens and closes the cause, in the same manner as in the court below. It is, in truth, a new trial. What has been said in relation to decrees of the District Court, applies with equal force to decrees of the Circuit Court; and the same stay of execution for ten days, in appealable cases, is provided by the general rules of the court."²⁷

§ 595. By the strict admiralty practice, the clerk of the court takes down in writing the *viva-voce* testimony of the witnesses, that

²⁶ *Penhallow v. Doane's Administrators*, 3 Dallas, 54; C. C. Rule 126, 128; Jud. Act of 1789, § 13; *vide* the forms in the Appendix.

²⁶ C. C. Rule 128, 131, 132, November 17, 1868; Ad. Rule 50, 51.

²⁷ *Ante*, § 580; C. C. Rule 133, 134.

the same may be returned in case of appeal. The practice has been found to be productive of great delay and expense, and it has become the practice in the Southern District of New York, to substitute the notes of the judge, instead of those of the clerk, and to excuse the clerk from taking the testimony. He accordingly never takes down the testimony in that district. The notes of the district judge are returned precisely as he takes them, and are read in evidence, and each party introduces such other and further proof, by the same or other witnesses, as may be in his power. The practice would be more perfect, if, in cases when an appeal is taken, the whole testimony taken below could be settled by the proctor of the appellant serving on the proctor of the appellee his statement of the testimony, — the proctor of the appellee proposing amendments, if necessary, and the judge settling it, the same, when settled, to be filed in the District Court and returned to the Circuit as the testimony in the cause. Such is the practice in the Circuit Court, as to the testimony there. It can hardly be doubted that the practice should be made uniform by the Supreme Court."

§ 596. If there be any reason why the decree of the District Court should be carried into effect subject to the ultimate decision on appeal, the Circuit Court will, on proper application, at any time after the cause is in court, on notice, order the decree to be carried into effect on such terms and conditions as may be just. If the security of the party is likely to be greatly impaired by any delay, the court will sometimes order the decree to be executed, unless further security is put in."

§ 597. In cases where an appeal lies from the decree of the Circuit Court, the final decree will not be executed till ten days have elapsed from the pronouncing or filing of the decision of the court; and if the appellant desires a stay of proceedings, he must proceed to file his appeal within the ten days."

As soon as the appeal is made from the decree of the Circuit Court, the appellant must, within four days, or such further time

²⁸ C. C. Rule 135.

²⁹ C. C. Rule 133.

³⁰ C. C. Rule 134; *Silsby v. Foote*, 20 How. 295; *post*, § 602.

as the court may allow, make and serve on the adverse party a statement of the testimony on the trial, except such testimony as was in writing, which must be properly referred to. The other party, within four days, must propose amendments, or the statement will be considered as acquiesced in, and the statements, if not acquiesced in, and the amendments, must be submitted, by the appellant's proctor, to the judge who heard the cause, within four days, for settlement, and when settled they are engrossed by the clerk, and with the written evidence, are deemed the proofs on which the decree was made. The statement, so settled, operates as a stay of further proceedings in the Circuit Court."

As an appeal may be taken at any time within five years, there would be an evident propriety in requiring the statement of the testimony to be settled in all appealable cases, and filed in the cause immediately after the decree, while the facts are recent.

§ 598. After the cause has been heard and decided in the Supreme Court, on appeal, that court issues its remittitur and mandate to the Circuit Court, directing the decree to be entered and executed there. The Circuit Court adopts and enters the proper decree, and it is then treated and executed as an original decree of that court.

What has been said on the subject of executing the decree of the District Court has equal application to the Circuit Court; the forms of execution are also the same, *mutatis mutandis*."

³¹ C. C. Rule 135; *post*, § 605.

³² *Ante*, § 555 *et seq.*; *vide* the forms in the Appendix.

CHAPTER XXXVIII.

THE SUPREME COURT OF THE UNITED STATES. — ITS JURISDICTION
AND PRACTICE IN ADMIRALTY AND MARITIME CASES.

§ 599. The original jurisdiction of the Supreme Court in admiralty and maritime causes is confined to cases which will rarely, if ever, arise. It is believed that no such case has hitherto been brought before that court, and they are quite as little likely to arise hereafter. Whenever such instances arise, the same practice will be required in that court as exists in the Circuit and the District Courts in similar cases, except where the practice is otherwise regulated by the Supreme Court in its rules.¹

§ 600. From all final judgments or decrees rendered in a Circuit Court, or in a District Court, acting as a Circuit Court, in any cases of admiralty and maritime jurisdiction, and of prize or no prize, an appeal, where the matter in dispute, exclusive of costs, shall exceed the sum or value of two thousand dollars, is allowed to the Supreme Court.²

What has been already said in relation to the amount in dispute, and the character and criterion of the final decree, applies equally to cases in the Supreme Court, and will not be here repeated.³

§ 601. After the final decision of the Circuit Court is made, and the final decree entered, an appeal may be taken at any time within five years, but if the party against whom the decree is made, desires a stay of proceedings on the decree, he must appeal within the time

¹ *Ante*, § 324.

² Act of March 3, 1803; 2 Stat. at Large, 244.

³ *Ante*, §§ 580, 581; *vide* *Olney v. The Falcon*, 17 How. 19; *Udall v. The Ohio*, id. 17; *Clifton v. Sheldon*, 23 id. 481; *Sampson v. Welsh*, 24 id. 207; *Cooke v. The U. S.*, 2 Wall. 218.

allowed by the rules of the court, or further time granted by the court, and lodge a copy of his appeal in the clerk's office for the opposite party. The first step is the appeal, — the second, the security, — the third, the citation, — the fourth, the return, — the fifth, the bond for costs.⁴

§ 602. *The Appeal.* — The appeal is entitled in the cause in the Circuit Court, and signed by the appellant or his proctor. It should briefly recite the proceedings in the Circuit Court, and be filed with the clerk of the Circuit Court. A copy is also to be lodged there for the opposite party, within ten days, Sundays excepted, after the filing the decree complained of, if the appeal is to operate as a stay of execution. No allowance of the appeal is necessary.⁵

§ 603. *The Security.* — The judge, before signing a citation, must take good and sufficient security that the appellant shall prosecute his appeal to effect, and answer all damages and costs, if he fails to make his plea good. If no stay of proceedings is required, the security is in such amount, as in the opinion of the judge shall be sufficient to answer all such costs, as upon affirmance of the decree, shall be decreed to the appellee.⁶

If the appeal is to stay execution, the security must be in a sufficient sum to secure the amount of debt, damages, and costs which may be covered by the decree of the appellate court.⁷

It is the duty of the judge to be satisfied that the security is good and sufficient, and to show that by his approval, endorsed on the bond. The security is usually taken in the form of a penal bond, and the penalty should be, at least, double the amount recovered in the court below, including costs and damages.⁸

The bond is filed in the Circuit Court, and remains there, because the Supreme Court does not execute its own decree, but remands the cause to the Circuit Court to execute the decree.⁹

⁴ The *Dos Hermanos*, 10 Wheat. 306; *vide* the forms in the Appendix.

⁵ Jud. Act of 1789, § 23; *ante*, § 597.

⁶ Act of 12th Dec. 1794, § 1, 22; 1 Stat. at Large, 85, 404; S. C. Rule 32.

⁷ *Catlett v. Brodie*, 9 Wheat. 553, S. C. Rule 32.

⁸ *Vide* the form in the Appendix, S. C. Rule 32.

⁹ *Ante*, § 598.

If the appeal be taken within five years, the security required by law may be given after the expiration of that period."

§ 604. *Citation.* — There must be a citation to the opposite party, signed by a judge of the Circuit Court which rendered the decree, or a judge of the Supreme Court, giving the opposite party at least thirty days' notice. The effect of the notice is to prevent the cause being heard before thirty days after the party is notified, unless the appellee appear."

The citation must be signed by the judge, and served personally by a copy. The original citation must be filed in the clerk's office, to be returned with the record."

§ 605. *The Return.* — The return must contain everything necessary to place the whole cause before the Supreme Court, in a manner to be fully heard. No cause will be heard until a complete record is filed, containing, in itself, without reference *aliunde*, all the papers, exhibits, depositions, statement of the testimony as settled, and other proceedings, — as well those carried into the Circuit Court from the District Court, as those originating in the Circuit, — including the appeal and citation, with proof of the service of them. And this record must contain all objections to the testimony taken below, as no objection is allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the record, unless the objection was taken in the court below, and entered on the record, and the same will otherwise be deemed to have been admitted by consent."

§ 606. *The Bond for Costs.* — On filing the return in the Supreme Court, the appellant must give to the clerk a bond, with competent security, to respond to costs, in the penalty of two hundred dollars, or deposit that amount in bank, subject to his draft. This provision is very strictly enforced, and the cause will not be dock-

¹⁰ *The Dos Hermanos*, 10 Wheat. 306.

¹¹ *Vide* the form in the Appendix; *Lloyd v. Alexander*, 1 Cranch, 365; *Buckingham v. McLean*, 13 How. 150.

¹² *Fairfax's Executor v. Fairfax*, 5 Cranch, 21; *Welch v. Mandeville*, *id.* 321.

¹³ S. C. Rule 13; *ante*, § 597.

eted before the security is given, and must take its place on the docket as of that date. This security is necessary, because the proctors and parties are usually remote from the seat of government where the clerk's office is kept, and the clerk incurs considerable expenses, beyond his fees, in preparing the papers. It is his duty to have the record printed, and he delivers the copies to the parties and the court."

§ 607. Each party should enter his appearance in person, or by proctor, immediately after the return of the appeal. If no appearance is entered on the record for either party, when the case is reached in the regular call of the docket, it will be dismissed at the costs of the appellant."

The following is a notice to the clerk to enter an appearance:

"SUPREME COURT OF THE UNITED STATES.

"ISAAC NEWTON, claimant of the Steamboat New Jersey, <i>Appellant.</i>	}
<i>vs.</i>	
JOHN H. STEBBINS, <i>Appellee.</i>	

"SIR,— You will please to enter my appearance for the appellee in this cause.

"December 3, 1849.

"E. C. BENEDICT,
Proctor for Appellee.

"To WM. T. CARROLL, Esq., *Clerk.*

§ 608. If the decree appealed from was rendered thirty days before the commencement of the term to which the appeal is returnable, the appellant must file the record with the clerk of the court at Washington, and docket the cause within the first six days of the term. If the decree appealed from was rendered less than thirty days before the commencement of the term, the appellant must docket the cause, and file the record thereof with the clerk of the

¹⁴ S. C. Rule 10; *Van Rensselaer v. Watts' Executors*, 7 How. 784; *Owings v. Lessee of Tiernan*, 10 Pet. 24.

¹⁵ S. C. Rule 18, 31; *Carroll v. Dorsey*, 20 How. 204.

court within the first thirty days of the term. If the appellant does not comply with these requirements, the appellee may do so, and have the cause stand for argument, or he may have the appeal dismissed. After it has been once dismissed, the appellant cannot docket it, unless by the order of the court. If the case is docketed, and a copy of the record filed with the clerk of the court by the appellant, within the periods of time already mentioned, or by the appellee at any time thereafter during the term, the case will stand for argument at the term.¹⁶

25. 2-10-6 § 609. The most liberal principles prevail in reference to amendments, but a party will not be allowed, by amendment, to introduce a new subject of controversy, nor will a new claim be allowed. If justice requires that a new claim be put in, or that the pleadings be reformed, the court will remand the cause to the circuit, with directions to permit that to be done which is necessary.¹⁷

§ 610. If pending an appeal, either party die, his legal representatives may voluntarily come in, and be admitted parties, and the cause proceeds without interruption. If they do not voluntarily come in, the other party may suggest the death on the record, and, on motion, have an order, that unless they become parties within the first ten days of the ensuing term, the moving party, if appellee, may have the appeal dismissed, or, if appellant, may bring on the hearing. The order, however, must be printed in a newspaper, at Washington, in which the laws are published, by authority there, at least sixty days before the beginning of the next term of the Supreme Court. When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case will abate.¹⁸

¹⁶ S. C. Rule 9.

¹⁷ *Houseman v. The North Carolina*, 15 Pet. 40; *The Mary Ann*, 8 ^{Cr} id. 380; *The Harrison*, 1 id. 298; *The Societe*, 9 Cranch, 209; *The Caroline v. The U. S.*, 7 Cranch, 496; *The Potomac*, 2 Black. 581; *ante*, § 488.

¹⁸ S. C. Rule 15; *ante*, § 485.

HEARING.

No notice of hearing from party to party is necessary, in cases on the docket, and, after the cause has been docketed, it is continued on the docket till disposed of.

If there be any special motion to be made, which is not to be put on the docket, notice must be given to the opposite party, with copies of the papers to be used on the motion. The notice must be for a reasonable time, — the situation of the parties, and the nature of the motion, being considered.

§ 611. If there be any irregularity in the appeal, — if the amount does not warrant an appeal, — if there be a palpable want of jurisdiction, or any reason why the cause should not be heard on appeal, it is the practice to make a special motion to dismiss the appeal, without waiting for the call of the cause in its order on the docket.¹⁹

When an appeal has been dismissed through mistake, it may be reinstated, or a new appeal may be taken within the five years.²⁰

§ 612. *Motions.* — The court does not hear arguments on Saturday (except for special cause), but that day is devoted to the other business of the court, and on Friday in each week, during the sitting of the court, at any time before the hearing of a cause is commenced, special motions have the preference, and they should be made at that time.

§ 613. *Argument.* — On the second day in term, the court commences calling the cases for argument, in the order in which they stand on the docket, and proceeds, from day to day, except Saturday, in that order. Only ten causes are liable to be called on each day. If either of the parties is ready, the cause is heard. If neither party is ready, it goes to the foot of the docket, unless good reason to the contrary be shown to the court. No cause is taken up out of its place, or set down for a particular day, except under special and peculiar circumstances. Every

¹⁹ *Carrol v. Dorsey*, 20 How. 204.

²⁰ *The Palmyra*, 12 Wheat. 1.

cause which has been twice called in its order, and put at the foot of the docket, if not again reached, is continued to the next term of the court."

When a case is called for argument, at two successive terms, and, on the call at the second term, neither party is prepared to argue it, it will be dismissed, at the costs of the plaintiff, unless good cause be shown for a further postponement."

The court will not hear any cause, until furnished, by the parties, with a printed abstract, containing the substance of all the material pleadings, facts, and documents on which they rely, and the points intended to be made, and the authorities intended to be cited in support of them, arranged under the respective points; and no book or case not on the points, can be referred to in the argument. Any party omitting to file such statement, will not be heard, but the other party will be allowed to proceed *ex parte*."

Only two counsel are permitted to argue for each party; and no counsel is permitted to speak more than two hours, without the special leave of the court, granted before the argument begins."

§ 614. When new evidence is admissible, and depositions are necessary, the depositions cannot be taken *de bene esse*, except by consent. They must be taken by commission, issuing out of the Supreme Court, or out of any Circuit Court, upon interrogatories, to be filed by the party applying for the commission, on notice to the opposite party, to be served with a copy of the interrogatories, and a notice to file cross interrogatories within twenty days."

If it should be necessary to inspect original papers, the presiding judge of the Circuit Court may order them to be sent to

²¹ S. C. Rule 26-30.

²² S. C. Rule 19.

²³ S. C. Rule 21.

²⁴ S. C. Rule 21.

²⁵ *The James Wells v. The U. S.*, 7 Cranch, 22; *The Clarissa Claiborne v. The U. S.* id. 107; *The London Packet*, 2 Wheat. 371; *The St. Lawrence*, 8 Cranch, 434; S. C. Rule 12.

the Supreme Court for inspection, and they may then be used in evidence."²⁶

Oral testimony may be given in open court, whenever it is by law admissible.

§ 615. If the counsel on both sides choose to submit a printed argument within the first sixty days of the term, the court will receive it, without regard to the number of the case on the docket. But twenty copies of the arguments, signed by attorneys or counsellors of the Supreme Court, must be first filed; ten copies for the court, two for the reporter, three to be retained by the clerk, and the residue for counsel. When a printed argument is filed for one or both parties, the case stands on the same footing as if there were an appearance by counsel. When, however, a case is taken up for trial upon the regular call of the docket, and argued orally in behalf of only one of the parties, no printed argument will be received, unless it is filed before the oral argument begins and the court will proceed to consider and decide the case upon the *ex parte* argument."²⁷

By thus submitting a cause on printed argument, a preference is gained, as it is submitted without regard to its order on the docket, although it is questionable whether a cause so submitted is as efficiently discussed as on an oral argument."²⁸

§ 616. *Decree*. — In cases of affirmance, the appellee is entitled to costs, unless otherwise ordered by the court, and further damages by way of interest, may be added to the damages awarded by the court below, in cases where, in the opinion of this court, the appellee, upon the proofs, is justly entitled to such additional damages."²⁹

In cases of dismissal, except for the want of jurisdiction, costs are allowed the appellee."³⁰

In cases of reversal, except for want of jurisdiction, costs are allowed the appellant, unless otherwise ordered by the court."³¹

²⁶ *The Elsinour*, 1 Wheat. 439.

²⁷ S. C. Rule 20.

²⁸ *Cutler v. Rae*, 7 How. 738.

²⁹ S. C. Rule 24; *Hemmenway v. Fisher*, 20 How. 255, 260.

³⁰ S. C. Rule 24.

³¹ S. C. Rule 24.

Costs are never given against the United States.

Subject to these general limitations, costs and counsel fees are in the discretion of the court. This is also true of the costs in the court below. The appellate court does not ordinarily interfere with that discretion."²²

The court does not, however, always simply affirm or reverse the decree below, but often modifies it, or makes a new decree such as the court below should have made."²³

When the court is equally divided, the decree of the court below stands affirmed."²⁴

In all cases after the decree is made, including cases of dismissal, the clerk issues a mandate or other process to the court below, informing it of the proceedings in the Supreme Court, and in the mandate he inserts the amount of costs, and annexes the bill of items taxed in detail, which is filed in that court, and the decree is executed there."²⁵

§ 617. When the court below errs in executing the mandate, an appeal may be taken to correct such error, and the Supreme Court will then construe and execute its own mandate. Upon such appeal, however, nothing is before the court but the proceedings subsequent to the mandate."²⁶

²² *Canter v. The American and Ocean Ins. Cos.* 3 Pet. 307; *The U. S. v. The Malek Adhel*, 2 How. 210.

²³ *Penhallow v. Doane's Administrators*, 3 Dal. 54.

²⁴ *The Antelope*, 10 Wheat. 66; *Etting v. The Bank of the U. S.*, 11 id. 59; *Washington Bridge Co. v. Stewart*, 3 How. 418.

²⁵ S. C. Rule 24; *ante*, § 598.

²⁶ *Walden v. Bodley*, 9 How. 48; *Corning v. The Troy Iron & Nail Factory*, 15 id. 466; *Perkins v. Tourniquet*, 14 id. 328.

APPENDIX.



APPENDIX.

RULES OF PRACTICE

FOR

THE COURTS OF THE UNITED STATES,

IN

ADMIRALTY AND MARITIME JURISDICTION, ON THE INSTANCE
SIDE OF THE COURT, IN PURSUANCE OF THE ACT OF
THE TWENTY-SECOND OF AUGUST, 1844,
CHAP. 188.

DECEMBER TERM, 1844.

1.

No mesne process shall issue from the district courts in any civil cause of admiralty and maritime jurisdiction until the libel, or libel of information, shall be filed in the clerk's office from which such process is to issue. All process shall be served by the marshal, or by his deputy, or, where he or they are interested, by some discreet and disinterested person appointed by the court.

2.

In suits *in personam* the mesne process may be by a simple warrant of arrest of the person of the defendant in the nature of a *capias*, or by a warrant of arrest of the person of the defendant, with a clause therein that if he cannot be found, to attach his goods and chattels to the amount sued for; or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or by a simple monition, in the nature of a summons to appear and answer to the suit, as the libellant shall, in his libel or information, pray for or elect.

3.

In all suits *in personam*, where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit and

abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the court to which the process is returnable, or in any appellate court. And upon such bond or stipulation summary process of execution may and shall be issued against the principal and sureties by the court to which such process is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

4.

In all suits *in personam* where goods and chattels, or credits and effects, are attached under such warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable upon the defendant, whose property is so attached, giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court; and upon such bond or stipulation summary process of execution shall and may be issued against the principal and sureties by the court to which such warrant is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

5.

Bonds, or stipulations in admiralty suits, may be given and taken in open court, or at chambers, or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court.

6.

In all suits *in personam* where bail is taken the court may, upon motion, for due cause shown, reduce the amount of the sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the court to be given, upon motion and due proof thereof.

7.

In suits *in personam* no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the court, upon affidavit or other proper proof, showing the propriety thereof.

8.

In all suits *in rem* against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances are in the possession or custody of any third person, the court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the marshal or other proper officer, if, upon the hearing, the same is required by law and justice.

9.

In all cases of seizure, and in other suits and proceedings *in rem*, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession for safe custody, and shall cause public notice thereof, and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the district court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct.

10.

In all cases where any goods or other things are arrested, if the same are perishable, or are liable to deterioration, decay, or injury by being detained in custody pending the suit, the court may, upon the application of either party, in its discretion, order the same or so much thereof to be sold as shall be perishable or liable to depreciation, decay, or injury; and the proceeds, or so much thereof as shall be a full security to satisfy the decree, to be brought into court to abide the event of the suit; or the court may, upon the application of the claimant, order a delivery thereof to him, upon a due appraisement to be had under its direction, either upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties in such sum as the court shall direct, to abide by and pay, the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervenes, as the one or the other course shall be ordered by the court.

11.

In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him, upon a due appraisement to be had, under the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties as aforesaid; and if the claimant shall decline any such applica-

tion, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court, or otherwise disposed of, as it may deem most for the benefit of all concerned.

12.

In all suits by material men for supplies or repairs, or other necessities, for a foreign ship, or for a ship in a foreign port, the libellant may proceed against the ship and freight *in rem*, or against the master or the owner alone *in personam*. And the like proceeding *in rem* shall apply to cases of domestic ships, where, by the local law, a lien is given to material men for supplies, repairs, or other necessities.*

13.

In all suits for mariners' wages the libellant may proceed against the ship, freight, and master, or against the ship and freight, or against the owner or the master alone *in personam*.

14.

In all suits for pilotage the libellant may proceed against the ship and master, or against the ship, or against the owner alone, or the master alone, *in personam*.

15.

In all suits for damage by collision the libellant may proceed against the ship and master, or against the ship alone, or against the master or the owner alone, *in personam*.

16.

In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be *in personam* only.

17.

In all suits against the ship or freight founded upon a mere maritime hypothecation, either express or implied, of the master, for moneys taken up in a foreign port for supplies or repairs, or other necessities for the voyage, without any claim of marine interest, the libellant may proceed either *in rem* or against the master or the owner alone *in personam*.

* *Vide* Rule 12, substituted for the above, *post*, page 373.

18.

In all suits on bottomry bonds, properly so called, the suit shall be *in rem* only against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be *in personam* against the wrong-doer.

19.

In all suits for salvage the suit may be *in rem* against the property saved, or the proceeds thereof, or *in personam* against the party at whose request and for whose benefit the salvage service has been performed.

20.

In all petitory and possessory suits between part owners or adverse proprietors, or by the owners of a ship, or the majority thereof, against the master of a ship for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

21.

In all cases of a final decree for the payment of money the libellant shall have a writ of execution, in the nature of a *fleri facias*, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the defendant or stipulators.

22.

All informations and libels of information upon seizures for any breach of the revenue, or navigation, or other laws of the United States, shall state the place of seizure, whether it be on land, or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought, and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to

be contrary to the form of the statute or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause at the return day of the process why the forfeiture should not be decreed.

23.

All libels in instance causes, civil or maritime, shall state the nature of the cause; as, for example, that it is a cause, civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be; and if the libel be *in rem*, that the property is within the district; and if *in personam*, the names and occupations and places of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegations of fact upon which the libellant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce his rights *in rem*, or *in personam* (as the case may require), and for such relief and redress as the court is competent to give in the premises. And the libellant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel at the close or conclusion thereof.

24.

In all informations and libels, in causes of admiralty and maritime jurisdiction, amendments, in matters of form, may be made at any time, on motion, to the court as of course. And new counts may be filed, and amendments, in matters of substance, may be made, upon motion, at any time before the final decree, upon such terms as the court shall impose. And where any defect of form is set down by the defendant upon special exceptions and is allowed, the court may, in granting leave to amend, impose terms upon the libellant.

25.

In all cases of libels *in personam* the court may, in its discretion, upon the appearance of the defendant, where no bail has been taken, and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation, with sureties in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order, in the progress of the suit.

26.

In suits *in rem* the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant by whom or on whose behalf the claim is made, is the true and *bona-fide* owner, and that no other person is the owner thereof. And where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or if the property be, at the time of the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And upon putting in such claim, the claimant shall file a stipulation, with sureties in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or, upon an appeal, by the appellate court.

27.

In all libels in causes of civil and maritime jurisdiction, whether *in rem* or *in personam*, the answer of the defendant to the allegations in the libel shall be on oath or solemn affirmation; and the answer shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel, and shall also answer in like manner each interrogatory propounded at the close of the libel.*

28.

The libellant may except to the sufficiency, or fulness, or distinctness, or relevancy of the answer to the articles and interrogatories in the libel; and if the court shall adjudge the same exceptions, or any of them, to be good and valid, the court shall order the defendant forthwith, within such time as the court shall direct, to answer the same, and may further order the defendant to pay such costs as the court shall adjudge reasonable.

29.

If the defendant shall omit or refuse to make due answer to the libel upon the return day of the process, or other day assigned by the court, the court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken *pro confesso* against him, and the court shall proceed to hear the cause *ex parte* and adjudge therein as to law and justice shall appertain. But the court may, in its discretion, set aside the default, and, upon the application of the defendant, admit him to make answer to the libel at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

* *Vide* Rule 49, *post*, page 376.

30.

In all cases where the defendant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken *pro confesso* against the defendant to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto.

31.

The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel which will expose him to any prosecution or punishment for a crime, or for any penalty or any forfeiture of his property for any penal offence.

32.

The defendant shall have a right to require the personal answer of the libellant upon oath or solemn affirmation to any interrogatories which he may, at the close of his answer, propound to the libellant touching any matters charged in the libel, or touching any matter of defence set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution, or punishment, or forfeiture, as is provided in the 31st rule. In default of due answer by the libellant to such interrogatories, the court may adjudge the libellant to be in default and dismiss the libel, or may compel his answer in the premises by attachment, or take the subject-matter of the interrogatory *pro confesso* in favor of the defendant, as the court, in its discretion, shall deem most fit to promote public justice.

33.

Where either the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the defendant when, and as soon as it may be practicable.

34.

If any third person shall intervene in any cause of admiralty and maritime jurisdiction *in rem* for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the

court, the other party or parties in the suit may be required, by order of the court, to make due answer; and such further proceedings shall be had and decree rendered by the court therein as to law and justice shall appertain. But every such intervenor shall be required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.

35.

Stipulations in admiralty and maritime suits may be taken in open court, or by the proper judge at chambers, or under his order, by any commissioner of the court who is a standing commissioner of the court, and is now by law authorized to take affidavits of bail, and also depositions in civil causes pending in the courts of the United States.

36.

Exceptions may be taken to any libel, allegation; or answer, for surplusage, irrelevancy, impertinence, or scandal; and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the court, the matter shall be expunged, at the cost and expense of the party in whose libel or answer the same is found.

37.

In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation as to the debts, credits, or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall refuse or neglect so to do, the court may award compulsory process *in personam* against him. If he admits any debts, credits, or effects, the same shall be held in his hands, liable to answer the exigency of the suit.

38.

In cases of mariners' wages, or bottomry, or salvage, or other proceedings *in rem*, where freight or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession of any person, the court may, upon due application, by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit; and if no sufficient cause be shown, the court may order the same to be brought into court to answer the exigency of the suit; and upon failure of the party to

comply with the order, may award an attachment, or other compulsive process, to compel obedience thereto.

39.

If, in any admiralty suit, the libellant shall not appear and prosecute his suit, according to the course and orders of the court, he shall be deemed in default and contumacy, and the court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

40.

The court may, in its discretion, upon the motion of the defendant and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct.

41.

All sales of property under any decree in admiralty shall be made by the marshal or his deputy, or other proper officer assigned by the court, where the marshal is a party in interest, in pursuance of the orders of the court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court by the officer making the sale, to be disposed of by the court according to law.

42.

All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so deposited in the name of the court, and shall not be drawn out except by a check or checks, signed by a judge of the court, and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book, containing a memorandum and copy of all the checks so drawn, and the date thereof.

43.

Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceeding, to intervene *pro interesse suo* for a delivery thereof to him; and upon due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such peti-

tion or claim shall be deserted, or, upon a hearing, be dismissed, the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

44.

In cases where the court shall deem it expedient or necessary for the purposes of justice, the court may refer any matters arising in the progress of the suit to one or more commissioners, to be appointed by the court to hear the parties and make report therein. And such commissioner or commissioners shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in reference to them, including the power to administer oaths to and examine the parties and witnesses touching the premises.

45.

All appeals from the district to the circuit court must be made while the court is sitting, or within such other period as shall be designated by the district court by its general rules, or by an order specially made in the particular suit.

46.

In all cases not provided for by the foregoing rules the district and circuit courts are to regulate the practice of the said courts, respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.

47.

These rules shall be in force in all the circuit and district courts of the United States from and after the first day of September next.

It is ordered by the court that the foregoing rules be, and they are, adopted and promulgated as rules for the regulation and government of the practice of the circuit courts and district courts of the United States in suits in admiralty on the instance side of the courts; and that the reporter of the court do cause the same to be published in the next volume of his reports, and that he do cause such additional copies thereof to be published as he may deem expedient for the due information of the bar and bench in the respective districts and circuits.

1845, March 5.

DECEMBER TERM, 1850.

Ordered, That the following supplemental rules be added to the rules heretofore adopted by this court for regulating proceedings in admiralty:

48.

In all suits *in personam* where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the State where an arrest is made upon similar or analogous process issuing from the State courts.

And imprisonment for debt, on process issuing out of the admiralty court, is abolished in all cases where, by the laws of the State in which the court is held, imprisonment for debt has been, or shall be hereafter, abolished, upon similar or analogous process issuing from a State court.

49.

The twenty-seventh rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars, exclusive of costs, unless the district court shall be of opinion that the proceedings prescribed by that rule are necessary for the purposes of justice in the case before the court.

All rules and parts of rules heretofore adopted inconsistent with this order are hereby repealed and annulled.

It is further ordered that these rules be published in the next volume of the Reports of the Decisions of this court, and that the clerk cause them to be forthwith printed and transmitted to the several district courts.

1851, January 9.

DECEMBER TERM, 1851.

50.

Ordered, That further proof taken in a circuit court upon an admiralty appeal shall be by deposition, taken before some commissioner appointed by a circuit court, pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the 24th of September, 1789, upon an oral examination and cross-examination, unless the court in which such appeal shall be pending, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such deposition upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination, a notification from the magistrate before whom it is to be taken, or from the clerk of the court in which such appeal shall be pending, to the adverse party to be present at the taking of the same, and to put interrogatories, if he think fit, shall be served on the adverse party, or his attorney, allowing time for their attendance after being notified not less than twenty-four hours, and in addition thereto one day, Sundays exclusive, for every twenty miles travel: *Provided*, That the court in which such appeal may be pending, or either of the judges thereof, may, upon motion, increase or diminish the length of notice above required.

51.

Ordered, That when oral evidence shall be taken down by the clerk of the district court, pursuant to the above-mentioned section of the act of Congress, and shall be transmitted to the circuit court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them, if he should so elect.

DECEMBER TERM, 1854.

Ordered, That the following supplemental rules be added to the rules heretofore adopted by this court for regulating proceedings in admiralty :

52.

When the defendant, in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication, general or special, shall be allowed. But within such time after the answer is filed as shall be fixed by the district court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid, or explain, or add to the new matters set forth in the answer ; and within such time as may be fixed, in like manner, the defendant shall answer such amendments.

53.

The clerks of the district courts shall make up the records to be transmitted to the circuit courts on appeals, so that the same shall contain the following :

1. The style of the court.
2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.
3. If bail was taken, or property was attached or arrested, the process of arrest or attachment and the service thereof, all bail and stipulations, and, if any sale has been made, the orders, warrants, and reports relating thereto.
4. The libel, with exhibits annexed thereto.
5. The pleadings of the defendant, with the exhibits annexed thereto.
6. The testimony on the part of the libellant, and any exhibits not annexed to the libel.
7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.
8. Any order of the court to which exception was made.
9. Any report of an assessor or assessors, if excepted to, with the orders of the court respecting the same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the assessor, are to be stated.
10. The final decree.

11. The prayer for an appeal, and the action of the district court thereon; and no reasons of appeal shall be filed or inserted in the transcript.

The following shall be omitted :

1. The continuances.
2. All motions, rules, and orders not excepted to which are merely preparatory for trial.

3. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the district court was founded on some one or more of these; in which case so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness, and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to; and in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

The clerk of the district court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document, at the end thereof, under the seal of the court, to be a transcript of the record of the district court in the cause named at the beginning of the copy made up pursuant to this rule; and no other certificate of the record shall be needful or inserted.

DECEMBER TERM, 1858.

No. 12.

Ordered, That the twelfth rule of practice prescribed by this court at December term, 1844, in cases of admiralty and maritime jurisdiction, be and the same is hereby repealed, and the following rule of practice is substituted in its place :

“ In all suits by material men for supplies or repairs, or other necessities for a foreign ship, or for a ship in a foreign port, the libellant may proceed against the ship and freight *in rem*, or against the master or owner alone *in personam*. And the like proceeding *in personam*, but not *in rem*, shall apply to cases of domestic ships for supplies, repairs, or other necessities.”

This order to take effect and be in force from and after the first day of May, 1859.

DECEMBER TERM, 1868.

No. 54.

Whenever a cross-libel is filed upon any counter-claim arising out of the same cause of action for which the original libel was filed, the respondents in the cross-libel shall give security in the usual amount and form, to respond in damages as claimed in said cross-libel, unless the court on cause shown, shall otherwise direct; and all proceedings upon the original libel shall be stayed until such security shall be given.

R U L E S
OF THE
SUPREME COURT OF THE UNITED STATES.

No. 1.

CLERK.

The clerk of this court shall reside and keep the office at the seat of the national government, and he shall not practice either as an attorney or counsellor in this court or in any other court while he shall continue to be clerk of this court.

The clerk shall not permit any original record or paper to be taken from the court-room, or from the office, without an order from the court.

No. 2.

ATTORNEYS.

It shall be requisite to the admission of attorneys and counsellors to practice in this court, that they shall have been such for three years past in the supreme courts of the States to which they respectively belong, and that their private and professional character shall appear to be fair.

They shall respectively take the following oath or affirmation, viz :

I, _____, do solemnly swear (or affirm, as the case may be), that I will demean myself, as an attorney and counsellor of this court, uprightly, and according to law ; and that I will support the Constitution of the United States.

No. 3.

PRACTICE.

This court consider the practice of the courts of Kings Bench, and of Chancery, in England, as affording outlines for the practice of this court ; and they will, from time to time, make such alterations therein as circumstances may render necessary.

No. 4.

BILL OF EXCEPTIONS.

Hereafter the judges of the circuit and district courts shall not allow any bill of exceptions, which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and such matters of law, and those only, shall be inserted in the bill of exceptions, and allowed by the court.

No. 5.

PROCESS.

All process of this court shall be in the name of the President of the United States.

When process at common law, or in equity, shall issue against a State, the same shall be served on the governor, or chief executive magistrate, and attorney general, of such State.

Process of subpoena, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return day of the said process; and if the defendant, on such service of the subpoena, shall not appear at the return day contained therein, the complainant shall be at liberty to proceed *ex parte*.

No. 6.

MOTIONS.

All motions hereafter made to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

No. 7.

LAW LIBRARY.

1. During the session of the court, any gentleman of the bar having a cause on the docket, and wishing to use any book or books in the law library, shall be at liberty, upon application to the clerk of the court, to receive an order to take the same (not exceeding at any one time three) from the library, he being thereby responsible for the due return of the same within a reasonable time, or when required by the clerk. And it shall be the duty of the clerk to keep, in a book for that purpose, a record of all books so delivered, which are to be charged against the party receiving the same. And in case the same shall not be so returned, the party receiving the same shall be responsible for, and forfeit and pay twice the value thereof; as also one dollar per day for each day's detention beyond the limited time.

CONFERENCE-ROOM.

2. The clerk shall take charge of the books of the court, together with such of the duplicate law books as Congress may direct to be transferred to the court, and arrange them in the conference-room, which he shall have fitted up in a proper manner; and he shall not permit such books to be taken therefrom, by any one, except the judges of the court.

No. 8.

RETURN TO WRIT OF ERROR.

1. The clerk of the court to which any writ of error shall be directed, may make return of the same, by transmitting a true copy of the record, and of all proceedings in the cause, under his hand and the seal of the court.

2. No cause will hereafter be heard until a complete record, containing in itself, without references *aliunde*, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

3. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit court, or district court exercising circuit court jurisdiction, that original papers of any kind should be inspected in this court, upon appeal or writ of error, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connexion with the transcript of the proceedings.

No. 9.

DOCKETING CASES.

1. In all cases where a writ of error or an appeal shall be brought to this court from any judgment or decree rendered thirty days before the commencement of the term, it shall be the duty of the plaintiff in error or appellant, as the case may be, to docket the cause and file the record thereof with the clerk of this court within the first six days of the term; and if the writ of error or appeal shall be brought from a judgment or decree rendered less than thirty days before the commencement of the term, it shall be the duty of the plaintiff in error or appellant to docket the cause, and file the record thereof with the clerk of this court within the first thirty days of the term; and if the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the case docketed and dismissed, upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered, stating the cause, and certifying that such writ of error or appeal has been duly sued out and allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the cause and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. By the defendant in error or appellee may, at his option, docket the cause, and file a copy of the record with the clerk of the court; and if the case is docketed, and a copy of the record filed with the clerk of this court by the plaintiff or appellant, within the periods of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter during the term, the case shall stand for argument at the term.

3. In all cases where the period of thirty days is mentioned in this rule, it shall be extended to sixty days in writs of error and appeals from California, Oregon, Washington, New Mexico, Utah, and Nevada.

No. 10.

SECURITY FOR COSTS.

1. In all cases the clerk shall take of the party a bond, with competent surety to secure his fees, in the penalty of two hundred dollars; or a deposit of that amount to be placed in bank subject to his draft.

PRINTING RECORDS.

2. In all cases, the clerk shall have fifteen copies of the records printed for the court, and the costs of printing shall be charged to the government in the expenses of the court.

3. The clerk shall furnish copies for the printer, shall supervise the printing, and shall take care of and distribute the printed copies to the judges, the reporter, and the parties, from time to time, as required.

4. In each case the clerk shall charge the parties the legal fees for but the one manuscript copy in that case.

5. In all cases the clerk shall deliver a copy of the printed record to each party; and in cases of dismissal, reversal, or affirmance with costs, the fees for the said manuscript copy of the record shall be taxed against the party against whom costs are given, and which charge includes the charge for the copy furnished him.

6. In cases of dismissal for want of jurisdiction, each party shall be charged with one-half the legal fees for a copy.

ATTACHMENT FOR COSTS.

7. Upon the clerk of this court producing satisfactory evidence, by affidavit, or the acknowledgment of the parties or their sureties, of having served a copy of the bill of fees due by them, respectively, in this court, on such parties or their sureties, an attachment shall issue against such parties or sureties, respectively, to compel payment of the said fees.

No. 11.

TRANSLATIONS.

Whenever any record, transmitted to this court upon a writ of error or appeal, shall contain any document, paper, testimony, or other proceeding in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceeding, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed, but the case shall be reported to this court by the clerk, and the court will thereupon remand it to the inferior court in order that a translation may be there supplied and inserted in the record.

No. 12.

EVIDENCE.

1. In all cases where further proof is ordered by the court, the depositions which shall be taken shall be by a commission to be issued from this court, or from any circuit court of the United States.

2. In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any circuit court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice: *Provided, however,* That nothing in this rule shall prevent any party from giving oral testimony in open court in cases where, by law, it is admissible.

No. 13.

DEEDS, ETC., NOT OBJECTED TO, ETC., ADMITTED, ETC.

In all cases of equity and admiralty jurisdiction heard in this court, no objection shall hereafter be allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

No. 14.

CERTIORARI.

No *certiorari* for diminution of the record shall be hereafter awarded in any cause, unless a motion therefor shall be made in writing, and the facts on which the same is founded, shall, if not admitted by the other party, be verified by

affidavit. And all motions for such *certiorari* shall be made at the first term of the entry of the cause; otherwise the same shall not be granted, unless upon special cause shown to the court accounting satisfactorily for the delay.

No. 15.

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal, in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the cause shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order, that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed; and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and on hearing have the same reversed if it be erroneous: *Provided, however,* That a copy of every such order shall be printed in some newspaper at the seat of government in which the laws of the United States shall be printed by authority, for three successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

2. When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

No. 16.

NO APPEARANCE OF PLAINTIFF.

Where there is no appearance for the plaintiff when the case is called for trial, the defendant may have the plaintiff called and dismiss the writ of error, or may open the record and pray for an affirmance.

No. 17.

NO APPEARANCE OF DEFENDANT.

Where the defendant fails to appear when the cause shall be called for trial, the court may proceed to hear an argument on the part of the plaintiff, and to give judgment according to the right of the cause.

No. 18.

NO APPEARANCE OF EITHER PARTY.

When a case is reached in the regular call of the docket, and no appearance is entered for either party, the case shall be dismissed at the costs of the plaintiff.

No. 19.

NEITHER PARTY READY AT SECOND TERM.

When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dismissed at the costs of the plaintiff, unless sufficient cause is shown for further postponement.

No. 20.

PRINTED ARGUMENTS.

1. In all cases brought here on appeal, writ of error, or otherwise, the court will receive printed arguments without regard to the number of the case on the docket, if the counsel on both sides shall choose so to submit the same within the first sixty days of the term; but twenty copies of the arguments, signed by attorneys or counsellors of this court, must be first filed: ten of these copies for the court, two for the reporter, three to be retained by the clerk, and the residue for counsel.

2. When a case is reached in the regular call of the docket, and a printed argument shall be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.

3. When a case is taken up for trial upon the regular call of the docket, and argued orally in behalf of only one of the parties, no printed argument will be received unless it is filed before the oral argument begins, and the court will proceed to consider and decide the case upon the *ex parte* argument.

No. 21.

TWO COUNSEL.

1. Only two counsel shall be permitted to argue for each party, plaintiff and defendant, in a cause.

TWO HOURS.

2. No counsel will be permitted to speak in the argument of any case more than two hours, without the special leave of the court granted before the argument begins.

BRIEFS.

3. Counsel will not be heard unless a printed brief or abstract of the case be first filed, together with the points intended to be made, and the authorities

intended to be cited in support of them arranged under the respective points and no other book or case shall be referred to in the argument.

4. The same shall be signed by an attorney or counsellor of this court.

5. If one of the parties omits to file such a statement, he cannot be heard, and the case will be heard *ex parte* upon the argument of the party by whom the statement is filed.

6. Twenty printed copies of the abstract, points, and authorities required by this rule shall be filed with the clerk by the plaintiff in error or appellant six days, and by the defendant in error or appellee three days, before the case is called for argument.

7. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

No. 22.

ORDER OF ARGUMENT.

The plaintiff or appellant in this court shall be entitled to open and conclude the case. But when there are cross-appeals, they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

No. 23.

INTEREST.

1. In cases where a writ of error is prosecuted to this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied from the date of the judgment below, until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment is rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages shall be awarded, at the rate of *ten per centum per annum* on the amount of the judgment; and the said damages shall be calculated from the date of the judgment in the court below, until the money is paid.

3. The same rule shall be applied to decrees for the payment of money in cases in chancery, unless otherwise ordered by this court.*

No. 24.

COSTS.

In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed for the

* Interest not allowed in admiralty, unless specially directed by the court. (30 How. p. 255.)

defendant in error or appellee, as the case may be, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, as the case may be, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, as the case may be, unless otherwise ordered by the court. The costs of the transcript of the record from the court below shall be a part of such costs.

4. Neither of the foregoing rules shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other proper process, in the nature of a *procedendo*, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

No. 25.

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall immediately, upon the delivery thereof, be delivered over to the clerk to be recorded. And it shall be the duty of the clerk to cause the same to be forthwith recorded, and to deliver the originals, with a transcript of the judgment or decree of the court thereon, to the reporter, as soon as the same shall be recorded.

2. And all the opinions of the court, as far as practicable, shall be recorded during the term, so that the publication of the reports may not be delayed thereby.

3. The original opinions of the court, delivered to the reporter, shall be filed with the clerk of this court for preservation as soon as the volume of reports for the term at which they are delivered shall be published.

No. 26.

CALL OF THE DOCKET.

The court on the second day in each term will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term, in the same order; and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if

neither party shall be ready to proceed in the argument, the cause shall go down to the foot of the docket, unless some good and satisfactory reason to the contrary shall be shown to the court. Ten causes only shall be considered as liable to be called on each day during the term, including the one under argument, if the same shall not be concluded on the preceding day. No cause shall be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the court. Every cause which shall have been called in its order, and passed, and put at the foot of the docket, shall, if not again reached during the term it was called, be continued to the next term of the court.*

No. 27.

MOTION DAY.

The court will not hear arguments on Saturday (unless for special cause it shall order to the contrary), but will devote that day to the other business of the court; and on Friday in each week, during the sitting of the court, motions in cases not required by the rules of the court to be put on the docket shall be entitled to preference, if such motions shall be made before the court shall have entered on the hearing of a cause upon the docket.

No. 28.

ADJOURNMENT.

The court will, at every session, announce on what day it will adjourn at least ten days before the time which shall be fixed upon; and the court will take up no case for argument, nor receive any case upon printed briefs, within three days next before the day fixed upon for adjournment.

No. 29.

DISMISSING CASES IN VACATION.

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in any appeal, shall at any time hereafter, in vacation and out of term time, by their respective attorneys, who are entered as such on the record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms upon which it is to be dismissed as to costs, and also paying to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party which may request it a copy of the agreement filed; but no mandate or other process is to issue without an order by the court.

* See Rule No. 30.

No. 30.

CALL OF THE DOCKET.

All cases on the calendar, except cases advanced as hereinafter provided, shall be heard when reached in the regular call of the docket, and in the order in which they are entered.

Criminal cases may be advanced, by leave of the court, on motion of either party.

Revenue cases and cases in which the United States are concerned, which also involve or affect some matter of general public interest, may also, by leave of the court, be advanced on motion of the Attorney-General.

Two or more cases also involving the same question may, by the leave of the court, be heard together, but they must be argued as one case.*

No. 31.

APPEARANCE — NOTICE OF MOTIONS.

Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the plaintiff in error or appellant shall be entered, and no motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

No. 32.

SUPERSEDEAS.

Supersedeas bonds in the Circuit Courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect and answer all damages and costs, if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including "just damages for delay," and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages; or where the property is in the custody of the marshal, under admiralty process, as in case of capture or seizure; or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use or detention of the property, and the costs of the suit and "just damages for delay," and costs and interest on the appeal.

* See Rule No. 26.

No. 33.

WRITS OF ERROR.

In cases where final judgment is rendered more than thirty days before the first day of the next term of this court, the writ of error and citation, if taken before, must be returnable on the first day of said term, and be served before that day; but in cases where the judgment is rendered less than thirty days before the first day, the writ of error and citation may be made returnable on the third Monday of the said term, and be served before that day.

RULES
OF THE
CIRCUIT COURT.
SOUTHERN DISTRICT OF NEW YORK.

Adopted April 28, 1888, and went into effect on the first Monday of August, 1888.

ON APPEALS.

116.

An appeal can be taken from no other than final decrees.

117.

A decree shall be deemed final when in a state for execution without further action of the court below.

118.

Every appeal to the Circuit Court, in a cause of admiralty and maritime jurisdiction, shall be in writing, signed by the party, or his proctor, and delivered to the clerk of the District Court, from the decree of which the appeal shall be made; and it shall be returned to the court, with the necessary documents and proceedings, within twenty days, and by the first day of the term next after the delivery thereof to the clerk, unless a longer time is allowed by the judge.

119.

The appeal shall briefly state the prayers, or allegations of the parties to the suit, in the District Court, in the proceedings in that court, and the decree, with the time of rendering the same. It shall also state whether it is intended, on the appeal, to make new allegations, to pray different relief, or to seek a new decision on the facts, and the appellants shall be concluded in this behalf, by the appeal filed.

120.

A copy of the appeal shall, at the same time, be served on the proctor of the appellees, in the court below, and an affidavit of the due service of such

copy, shall be filed with the appeal. And no process, or order, shall be necessary to bring the appellees into this court.

121.

If in the appeal, it shall not be intended to make new allegations, to pray different relief, nor to seek a new decision of the facts, then the pleadings, evidence, and decree, in the District Court, with the stipulations in the cause, and the clerk's account of the funds in court, in the cause, if any, shall be certified to this court with the appeal. But in all cases the statement of facts agreed between the parties, or settled by the judge of the District Court, and on file, according to the practice of that court, may be certified in the place of the evidence at large.

122.

If it shall be intended to seek only a new decision of the facts, then the pleadings of the parties, with the stipulations in the cause, and the clerk's account of the funds in court, if any, and the exhibits and depositions in the cause, shall be certified to this court with the appeal. But the proofs need not be certified, unless specially required by the appellant, or ordered by this court.

123.

If it shall be intended to make new allegations, or to seek new relief, then the return to the petition of appeal, shall only contain copies of the process issued upon the libel, and of the return thereof, the account of the clerk of the funds in court, in the cause, the depositions and exhibits, and the stipulations in the cause.

124.

The appellant shall cause the notice of appeal, and an affidavit of the service of a copy thereof, with the documents required to be returned with the appeal, to be filed in this court within four days after the return is completed by the clerk, otherwise the appeal shall not be received, and shall be deemed deserted; and a certificate in this behalf shall be made to the court from which the appeal is made, which may proceed to execution of its decree.

125.

This court shall be deemed possessed of the cause, from the time of filing the appeal with the documents required to be returned therewith, in this court.

126.

If the appellee does not enter his appearance, within the two first days in term, succeeding the filing the appeal, and proceedings, and affidavit of ser-

vice of notice thereof on him, the appellant may proceed *ex parte* in the cause, and have such decree as the nature of the case may demand.

127.

No answer or issue need be given to the appeal. Each party may notice the cause for hearing, for the term to which the appeal is made (if made in term time), or if made in vacation, for the term next succeeding.

128.

A writ of *inhibition* will be awarded, at the instance of the appellant, when circumstances require, to stay proceedings in the court below; notice of such application having been previously given.

129.

A *mandamus* may in like manner be obtained to compel a return of the appeal when unreasonably delayed by the clerk, or court below.

130.

If the appellee shall have any cause to show why new allegations, or proofs, should not be offered, or new relief prayed, on the appeal, he shall give four days' notice thereof, and serve a copy of the affidavit containing the cause intended to be shown: and such cause shall be shown within the two first days of the term; otherwise the appeal shall be allowed according to its terms.

131.

If new allegations are to be made, or different relief prayed, in this court, then the libellant in the District Court, shall exhibit, in this court, a libel on oath within ten days, to which the adverse party shall, in twenty days, answer on oath, subject in each case to the extension of those periods, by order of either of the judges of this court; and on a default on this behalf, the court will, on motion, without notice, make such order for finally disposing of the cause, on the default of the party, as the nature of the case may require.

132.

After the libel and answer, whether newly filed in this court, or certified from the District Court, shall be filed in this court, the cause shall be proceeded in to a hearing, as in other cases. But where interrogatories have been answered in the District Court, or written testimony taken, the same may be used in this court.

133.

The appellee may move this court to have the decree made in the District Court, carried into effect subject to the judgment of this court, or of the Supreme Court on appeal, upon giving his own stipulation to abide and perform the decree of such courts: and this court will make such order, unless the appellant shall give security by the stipulation of himself, and competent sureties, for payment of all damages and costs, on the appeal in this court, and in the Supreme Court, in such sums as this court shall direct.

134.

In cases where an appeal shall lie from the decree of this court, the final decree shall not be executed until ten days shall have elapsed from the pronouncing or filing of the decision of the court. •

135.

When appeal shall be made from the decree of this court, the appellant shall, within four days from the pronouncing or filing of such decision, unless further time is allowed by the judge, make, and serve on the adverse party a statement of the testimony on the trial, excepting such evidence as was in writing, which shall be properly referred to therein. The party on whom the same shall be served shall, in four days after such service, propose amendments thereto, or the statement shall be deemed acquiesced in, and the statements and amendments, unless acquiesced in, shall be submitted by the appellant to the judge, in four days afterwards, for settlement; and the same, when settled, shall be engrossed by the clerk, and with the written evidence, shall be deemed the proofs on which the decree is made, and shall operate as a stay of further proceedings in this court.

136.

In all cases, in civil causes of admiralty and maritime jurisdiction, not expressly provided for by the foregoing Rules of this Court, the Rules of Practice of the District Court for the Southern District of New York, being in force at the time, and whether established before or after these Rules (not being inconsistent with these Rules), are adopted, and are to be received as Rules of Practice in this court.

SEPTEMBER 2, 1845.

On appeals, no paper proceedings shall be read in this court, unless they be papers duly sent up by the court below, and on file in this court, or original papers on the files of this court, or copies of such papers duly certified by the clerk of this court.

APRIL 1, 1850.

No action, real or personal, shall abate by the death, marriage, or other disability of either party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, marriage, or other disability of a party, the Court, on motion, may allow the cause to be continued by or against the successor in interest, on the usual notice to the party interested, or such other notice as may be directed by the Court.

JANUARY 20, 1851.

The clerk of this court, and the clerk of the District Court of the United States for the Southern District of New York, and also the chief clerk or deputy of each of said clerks (such chief clerk or deputy being designated in writing by the clerk appointing him, and the appointment being approved by the circuit judge of this circuit, or, in case of his absence from the district, by the district judge, and such designation, with the approval endorsed thereon, being filed in his office by each of the said clerks respectively), and also the standing masters in chancery appointed by this court, and also the county judge of each county within the Southern District of New York, other than the county of Kings and the city and county of New York (if the said officers before named shall be each of the degree of counsellor at law of this court, or of the Supreme Court of the State of New York), whether said officers are in office at the time of making this order, or shall be subsequently appointed or elected thereto, shall be, whilst holding such office, *ex officio*, commissioners of this court, and each of such officers, whilst in office, is hereby appointed a commissioner to take affidavits in civil causes depending in the Courts of the United States, and to execute all the powers, and perform all the duties, authorized or conferred by the Act of Congress entitled, "An Act in addition to the Act entitled, 'An Act to establish the judicial Courts of the United States,' approved March 2d, 1793; and the Act of Congress entitled, 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,' approved February 20, 1812; and the Act of Congress entitled, 'An Act in addition to the Act entitled, 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,' approved March 1, 1817; and the Act of Congress entitled, 'An Act further supplementary to an Act entitled, 'An Act to establish the judicial Courts of the United States,' passed the 24th September, 1789, approved August 23, 1842; and the Act entitled, 'An Act to amend and supplementary to the Act entitled, 'An Act respecting fugitives from justice, and persons escaping from the service of their masters,' approved February 12, 1793,' approved September 10, 1850; or of any other Act of Congress having relation to such commissioners and their duties or powers.

OCTOBER TERM, 1851.

Whereas, Samuel Blatchford, Esq., Counsellor at law, has been appointed Reporter of the decisions of the Circuit Judge, in the Circuit Courts of the United States, held in the Second Circuit thereof :

Ordered, That the solicitors, attorneys, and proctors of said court, in case of motions for new trials, demurrers, writs of error, appeals in admiralty, and cases in equity bringing on the argument, furnish the said reporter with a copy of the case, demurrer book, error book, apostles, including all proofs in the court below, and in this court, in the case, and of the pleadings and proofs in equity as the case may be, at or before the commencement of the argument.*

JANUARY 27, 1853.

All and each of the Commissioners appointed by this Court, by order or rule, entered January 20, 1851, to take affidavits in civil causes depending in the Courts of the United States, &c., be, and the said Commissioners are hereby appointed and authorized to act as Commissioners, and each of them is hereby appointed to act as a Commissioner, under the provisions of the Act of Congress entitled, "An Act for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivering up of certain offenders," approved August 12, 1848.

SEPTEMBER 21, 1859.

All money brought into court, in any suits pending in this court, shall be deposited by the clerk of the court, in the United States Trust Company, upon such terms as shall be agreed between the clerk and the company, and approved of by the court.

NOVEMBER 10, 1868.

In taking testimony, all Masters, Examiners, Referees, and Commissioners shall, where testimony is written down by question and answer, number the questions put to each witness continuously, from the commencement of his direct examination to the final close of his examination, direct and cross.

NOVEMBER 17, 1868.

On the hearing, in this court, of an appeal from the District Court, on any record which shall hereafter be transmitted from the District Court, no statement or report found in such record, of any testimony given *via voce*, in open court, in the District Court, will be considered by this court as evidence, unless such testimony shall appear, on its face, to have been taken down in the same manner as in jury trials in common law issues, and not *verbatim* as in depositions *de bene esse*.

* *Vide* C. C. Rule, October 23, 1850. Northern District, note.

RULES
OF THE
DISTRICT COURT.
SOUTHERN DISTRICT OF NEW YORK.

Adopted, November 6, 1838.

1.

A libel, information, or petition, must state plainly the facts upon which relief is sought, without any repetitions or amplification of charges.*

2.

No process shall issue until the pleading or statement in writing upon which it is allowed be duly filed.†

3.

Libels (except on behalf of the United States) praying an attachment *in personam* or *in rem*, or demanding the answer of any party on oath, shall be verified by oath or affirmation.‡

4.

The oath, or affirmation, of the party himself, in all cases where one is necessary, shall be required to pleadings filed in his name, except as is hereafter otherwise provided, or as shall be specially ordered by the Judge.§

5.

Libels, informations, or petitions, praying a monition or citation only, without attachment, need not be sworn to.

6.

Libels, and other proceedings to be filed, shall be plainly and fairly engrossed, without erasures or interlineations materially defacing them. If papers not conforming to this Rule are offered, the clerk shall require the *allocatur* of the judge to be endorsed thereon, before he receives them on the files.

* See Rules 23 and 23, in Admiralty, prescribed by the Supreme Court.

† See Rule 1, in Admiralty, prescribed by the Supreme Court.

‡ See Rule 37, *post*.

§ See Rule 93, *post*.

7.

Amendments, or supplementary matters, must be connected with the libel or other pleading by appropriate references, without a recapitulation or restatement of the pleading amended or added to.

8.

In suits for seamen's wages, any mariner in the same voyage, not made a party, may, by short petition to the court, in any stage of the cause previous to the final distribution of the fund in court, or discharge of the defendant and his sureties, be joined as libellant in the cause, but no costs shall be allowed for the proceedings taken to make him a party.

9.

The proctor in the original cause shall not, however, be compelled to proceed in behalf of such petitioning mariner, unless a reasonable indemnity is offered for such costs as may be incurred in consequence of his being joined in the cause.

10.

In case of salvage and other causes, civil and maritime, persons entitled to participate in the recovery, but not made parties in the original libel, may, upon petition, be admitted to prosecute as co-libellants, on such terms as the court may deem reasonable.

11.

Process on libels or informations may be made returnable on any day, at a stated or special term, but writs for the sale of property under any order or decree of the court, and all final process, shall be returnable at a stated term, unless, upon cause shown, an earlier day is specially appointed by the judge.

12.

Tuesday of each week is appointed as a special sessions of the court (except the stated term be then in session), at which the same proceedings may be taken, in causes of admiralty and maritime jurisdiction, as at a stated term.

13.

Process to be used in commencing suits shall be a citation or monition; an attachment *in rem*, united with a monition, or, by special allowance of the judge, with an attachment *in personam*; an attachment *in personam* and a writ of foreign attachment.*

* See Rule 2, in Admiralty, prescribed by the Supreme Court.

14.

Where no specific process is provided by the rules, parties may have such process as is in use in like cases in the Supreme Court of the State.*

15.

Where it is not desired to arrest a defendant, the clerk, on filing a libel or information, may, at the instance of the actor, issue a citation or monition, according to the usage in civil and admiralty proceedings.†

16.

No process *in personam*, for the arrest of any person, in cases of torts or unliquidated damages, shall issue, except upon the mandate of the Judge.‡

17.

In cases of liquidated damages, when the certainty and amount of the demand appear upon the face of the libel, an attachment *in personam* may be issued by the clerk without an order. The attachment shall plainly express the cause of action and the amount of the demand, and the clerk shall endorse thereon the sum for which bail is required, not exceeding one hundred dollars above the sum sworn to be due and unpaid; but no attachment or citation shall be issued until the libellant shall have filed a stipulation for costs, in the sum of one hundred dollars, except in suits by the United States.§

18.

On the return of a citation or warrant by the marshal, "served personally," the party shall be deemed in court, and may be proceeded against accordingly.

19.

When the citation or monition, in suits *in personam*, is not served personally, the libellant may, at his election, pursue the defendant to a decree of contumacy, in which decree may be embraced an order for the attachment of the defendant as for contempt of process; or, on verifying by oath the matters demanded by the libel, the libellant may have an attachment *in personam* *instanter*, on the return of the citation "not served."

20.

In the latter case, all subsequent proceedings may be as if the attachment had been sued out in the first instance.

* See Rule 2, in Admiralty, prescribed by the Supreme Court.

† See Rules 2 and 7, in Admiralty, prescribed by the Supreme Court.

‡ See Rule 7, in Admiralty, prescribed by the Supreme Court.

§ See Rules 44 and 45, *post*; and Rule of April 16, 1847, *post*; and Rule 7, in Admiralty, prescribed by the Supreme Court.

21.

On warrants to arrest the person, in admiralty and maritime causes, the marshal may take bail in the form of a stipulation, and in the sum endorsed on the warrant, conditioned for the appearance of the party on the return day, to answer to the libellant in a cause civil and maritime, according to the course of the court.*

22.

The sureties having made oath thereon to their sufficiency, and the bail stipulation being filed, it shall have the same effect in favor of the actor, and against the defendant, as if taken in court; and the marshal shall be deemed discharged of all personal responsibility for the appearance of the respondent.

23.

In case the marshal does not file such stipulation, or the sureties, being required, refuse to justify, like proceedings may be taken to compel the marshal to bring in the party, as if no stipulation had been entered into.

24.

The condition of the stipulation shall be deemed satisfied, if the party shall appear in person, on the return day of the warrant, and submit himself for commitment, or enter into the usual stipulation in the cause, according to the course of the court.

25.

If a party against whom a warrant of arrest issues cannot be found, and return thereof be made, the plaintiff may, upon the mandate of the judge, have a warrant to attach the property of the defendant, and may also have inserted therein a clause of foreign attachment, according to the course of the admiralty.

26.

In all cases of attachment, under admiralty process, to compel an appearance, the attachment may be dissolved on the party's giving a stipulation with sureties, to the same effect as in cases of arrest.†

27.

In cases of foreign attachment, if the defendant appear, the same proceedings may be had as is usual in suits *in personam*, and, if he make default, the court

* See Rules 3 and 48, in Admiralty, prescribed by the Supreme Court.

† See Rule 4, in Admiralty, prescribed by the Supreme Court.

will proceed *ex parte*, and pronounce the proper decree, unless the attachment is discharged at the instance of the garnishee.

28.

Process cannot issue against goods, choses in action, or moneys in the hands of third persons, except by the order of the judge, and upon due proof of the claim first made; and the names of such persons, and also of the persons whose effects are to be attached, together with a specification of such effects, shall be expressed in the process.

29.

On the service of the attachment by arrest of property, the parties holding the property or funds attached shall, on the return day of such process, file an affidavit containing a full and true statement of the property or funds in their hands, belonging to the principal party at the time the attachment was served and at the time the deposition is made, and declare whether they have any, and, if any, what claim to any, and what part thereof, and shall then, on motion of the actor, pay into court such amount as they shall not claim, or as may be ordered by the court, or give stipulation, with sufficient surety, to abide the further order or decree of the court in relation thereto; and, on their default in this behalf, a rule may be entered, that an attachment issue against them, unless they shall show cause in four days, or on the first day the court is in session afterwards.*

30.

When the property, effects or credits named in the process are not delivered up to the marshal by the garnishee or trustee, or are denied by him to be the property of the party, it shall be a sufficient service of such foreign attachment to leave a copy thereof with such trustee, or at his residence or usual place of business, unless the libellant shall, by competent surety, indemnify the marshal for arresting the property pointed out to him.*

31.

On the return, by the marshal, of service of such attachment by notice and copy, with the reason thereof, the libellant may move the court for a peremptory attachment, or such order as the equity of the case may demand; or, on proof satisfactory to the court, that the property, &c., belongs to the defendant, may proceed to a hearing and final decree in the cause, as if the property had been held in arrest.*

* See Rule 37, in Admiralty, prescribed by the Supreme Court.

32.

All process to the marshal shall be returned on the return day thereof, and, if he shall not return the same in four days after being required in writing so to do, by any party or his proctor, upon affidavit of such requirement and of the delivery of the process to him, an order may be entered, of course, that he show cause why an attachment shall not issue against him; and, in the case of process *in rem*, the return of the marshal shall express the day of the seizure of the property or the day of sale, if a process for that object.

33.

No process shall be received on file unless duly returned by the officer to whom directed.

34.

In case the court is not in session at the return of process requiring to be acted on in open court, proceedings shall be deemed continued to the next sitting of the court (either stated or special), at which time the like proceedings may be had thereupon as if then returnable.

35.

On proclamation, after due return of process, the libellant shall be entitled to a decree of default or contumacy, according to the nature of the case, and the three proclamations heretofore used are abolished.*

36.

In case of the attachment of property, or the arrest of the person, in causes of civil and admiralty jurisdiction (except in suits for seamen's wages, when the attachment is issued upon certificate, pursuant to the Act of Congress of July 20, 1790), the party arrested, or any person having a right to intervene in respect to the thing attached, may, upon evidence showing any improper practices, or a manifest want of equity on the part of the libellant, have a mandate from the judge, for the libellant to show cause instantly why the arrest or attachment should not be vacated.

37.

Stipulations may be taken, in admiralty and maritime causes, out of court, before the clerk or a commissioner, under a *dedimus potestatem*. The officer taking the stipulation shall, if required by the opposite party, examine the sureties on oath and decide as to their competency. An appeal may be taken

* See Rules of December 1, 1847, *post*; and Rule of February 7, 1863, *post*; and Rule 29, in Admiralty, prescribed by the Supreme Court.

instantan to the judge, in case the decision is against the sufficiency of the sureties.*

38.

The conditions of stipulations, in causes *in personam*, shall be, that the principal, whenever required by this court, or an appellate court, in case of appeal, shall appear and answer to the cause or to interrogatories, and pay all costs that may be decreed against him, and, by the respondent or defendant, that he will also perform and abide all orders and decrees in the cause, interlocutory or final, or deliver himself personally for commitment, in execution of such orders, to the proper officer.†

39.

The amount of stipulations on the part of the defendants, in causes *in personam*, shall be the sum endorsed on the warrant, and, *in rem*, on the delivery of property attached, the appraised or agreed value of the property seized, unless the sum, in either case, is modified or enlarged by order of the court.

40.

Application may be made instantan to the judge, after an arrest *in personam*, to mitigate the amount of the bail stipulation; and like application may be made at any time after property has been delivered on bail stipulation, upon facts occurring after such delivery, to discharge such stipulation, or to reduce the amount, according to the equity of the case, previous notice of the application having been given the proctor of the libellant.‡

41.

Two days' notice shall be given the proctor of the libellant, of application for delivering up on stipulation property under attachment, specifying the sureties intended to be given, and their occupations and places of residence, and the officer before whom, and the place where, the stipulation will be offered, except in suits by seamen for wages, when such notice may be instantan.§

42.

The stipulation or bond to be given upon releasing and delivering up property arrested by process of the court, shall be conditioned that the claimant and his sureties shall, at any time, upon the interlocutory order or decree of the court, or of any appellate court to which the cause may proceed, and on notice

* See Rules 5 and 85, in Admiralty, prescribed by the Supreme Court.

† See Rule 3, in Admiralty, prescribed by the Supreme Court.

‡ See Rule 6, in Admiralty, prescribed by the Supreme Court.

§ See Rule of October 1, 1867, *post*.

of such order to the proctor of the party to whom the property shall have been delivered, bring into court the appraised or agreed value of such property, or any part thereof so ordered or decreed. If no proctor is employed by such party, the order or decree shall be deemed peremptory two days after the same is entered.*

43.

The clerk shall provide a book in which shall be registered all stipulations filed in causes civil and admiralty, which shall be open to the examination of all parties interested.

44.

No process *in rem* shall be issued, nor shall any appearance or answer be received, or third party be permitted to intervene and claim, except on the part of the United States, unless a stipulation, in the sum of two hundred and fifty dollars, shall be first entered into by the party, and at least one surety, resident in the District, conditioned that the principal shall pay all costs awarded against him by this court, or, in case of appeal, by the appellate court.†

45.

But seamen suing *in rem* for wages, in their own right and for their own benefit, for services on board American vessels, and salvors coming into port in possession of the property libelled, shall not be required to give such security in the first instance. The court, on motion, with notice to the libellants, may, after the arrest of the property, for adequate cause, order the usual stipulation to be given in these cases, or that the property arrested be discharged.‡

46.

Notice of the arrest of property by attachment *in rem*, in behalf of individual suitors, shall be published and affixed in the manner directed by Act of Congress in case of seizures on the part of the United States, except when the judge by special order directs a shorter notice than fourteen days; and except that, instead of the substance of the libel, a short statement of its purport may be given.

47.

Notice of sale of property after condemnation, in suits *in rem* (except under the revenue laws and on seizure by the United States), shall be six days, unless otherwise specially directed in the decree of condemnation and sale.

* See Rules 10 and 11, in Admiralty, prescribed by the Supreme Court.

† See Rule 17, *ante*; and Rule of April 16, 1847, *post*; and Rule of April 26, 1885, *post*, allowing a surety to reside in the Eastern District of New York; and Rule 26, in Admiralty, prescribed by the Supreme Court.

‡ By Rule of April 16, 1847, *post*, this rule is made applicable alike to suits *in personam* and *in rem*. See Rule 17, *ante*.

48.

All such notices shall be published in the manner directed by Act of Congress, in the case of condemnation under the revenue laws.

49.

The marshal shall be allowed (in conformity to the former usage of the court) one dollar and fifty cents per day for the custody of a vessel, her tackle, apparel, and furniture, seized by any officer of the revenue, and seized, libelled, and prosecuted for forfeiture.

50.

He shall be allowed for the custody of goods so seized, on all sums not exceeding \$5,000, held in custody less than thirty days, two *per cent*; on all sums exceeding \$5,000, held in custody less than thirty days one *per cent*; on all sums not exceeding \$5,000, held in custody over thirty days, two and a half *per cent*; and on all sums exceeding \$5,000, held in custody over thirty days, one and a half *per cent*; except, on attachment of specie, bullion, jewelry, or precious stones, the allowance to the marshal shall be specifically fixed by the court, having regard to the special circumstances of each case.

51.

The marshal may have like allowances taxed on all other attachments of property, in causes of civil and admiralty jurisdiction.

52.

All the above allowances are, however, subject to alteration by the court on motion, due notice thereof being given the opposite party, and adequate cause being shown therefor.

53.

The allowance to the marshal, above appointed for the custody of goods, shall be computed upon the gross proceeds, in case of sale; or upon the appraised or agreed value, if bonded; but the marshal, in case of an agreed valuation between the parties, not assented to by him, may have an appraisal in the usual mode.

54.

If attachments *in rem* are accompanied by written instructions to the marshal, specifying the sum demanded (adding thereto \$250, to cover costs), he shall, as in case of executions, only arrest so much of the goods or effects to be seized (when severable) as shall be sufficient to satisfy such amounts.

55.

In all cases of stipulations, in civil and admiralty causes, any party having an interest in the subject-matter, may move the court, on special cause shown, for greater or better security, giving the opposite party two days' notice thereof unless a shorter time is allowed by order of the judge.*

56.

After a citation or monition, or warrant of arrest, in suits *in personam*, returned "served personally," if the defendant do not appear at the return day, he shall be deemed in contumacy and in default, and the libellant may take order for enforcement of the stipulation (in case any is given), or to compel the defendant's appearance, according to the course of admiralty proceedings; or, at his option, may proceed to hearing *ex parte* and obtain the proper decree, unless the court, for good cause, shall allow the defendant further time.

57.

In suits *in personam*, stipulators to the marshal on the arrest of the defendant may be discharged from their stipulation, on the surrender of the principal, as in cases of bail at law.

58.

So, also, stipulators or *fide-jussores*, after the return of the attachment, in suits *in personam*, may surrender their principal, or he may surrender himself, in discharge of the stipulation, as in cases of special bail at law; except in respect to costs in this court, or any other court to which the cause may be appealed.

59.

All stipulations in causes civil and maritime shall be executed by the principal party (if within the district), and at least one surety resident therein, and shall contain the consent of the stipulators, that, in case of default or contumacy on the part of the principal or sureties, execution to the amount named in such stipulation may issue against the goods, chattels, and lands of the stipulators. The court will modify the execution as to the time it may stay and the amount to be collected, according to the equity of the case. Non-resident parties must supply at least two sureties.†

60.

In case of seizure of property in behalf of the United States, an appraisalment for the purpose of bonding the same may be had by any party in interest,

* See Rule 6, in Admiralty, prescribed by the Supreme Court.

† See Rule of April 26, 1865, *post*, allowing a surety to reside in the Eastern District of New York.

on giving one day's previous notice of motion before the court, or the judge in vacation, for the appointment of appraisers.

61.

If the parties or their proctors and the District Attorney are present in court, such motion may be made *instanter*, after seizure, and without previous notice.

62.

Orders for the appraisal of property under arrest at the suit of an individual, may be entered, of course, by the clerk, at the instance of any party interested therein, or upon filing the consent of the proctors for the respective parties.

63.

Only one appraiser is to be appointed in suits by individuals, unless otherwise specially ordered by the judge, and, if the respective parties do not agree in writing upon the appraiser to be appointed, the clerk shall forthwith name him, either party having a right of appeal *instanter* to the judge from such nomination, for adequate cause.

64.

In case vessels, their tackle, or appurtenances, are to be appraised, the clerk shall name a warden of the port, and, in case of merchandise, an appraiser or an assistant appraiser of the custom-house, as appraiser.

65.

In suits *in rem* for seamen's wages, and in all other actions *in rem* for sums certain, the claimant or respondent may pay into court the amount sworn to be due in the libel, with interest computed thereon from the time it was due, to the stated term next succeeding the return day of the attachment, and the costs of the officers of court already accrued, together with the sum of \$250 to cover further costs, &c. ; or, at his option, may give stipulation to pay such sworn amount, with interest, costs, and damages (first paying into court the costs of the officers of court already accrued), and, in either case, may thereupon have an order entered *instanter*, for delivery of the property arrested, without having the same appraised.

66.

Appraisers, before executing their trust, shall be sworn or affirmed to its faithful discharge, before the clerk or his deputy (who are hereby appointed

commissioners for the qualification of appraisers), and shall give one day's previous notice of the time and place of making the appraisal, by affixing the same in a conspicuous place adjacent to the United States Court Rooms, and where the marshal usually affixes his notices, to the end that all persons concerned may be informed thereof, and the appraisal, when made, shall be returned to the clerk's office.

67.

Appraisers acting under an order of this court shall be severally entitled to three dollars for each day necessarily employed in making the appraisal, to be paid by the party at whose instance the same shall be ordered.

68.

No vessels, goods, wares, or merchandise in the custody of the marshal shall be released from detention, upon appraisal and surety, until the costs and charges of the officers of this court, so far as the same shall have accrued, shall first be paid into court by the party at whose instance the appraisal shall take place, to abide the decision of the court in respect to such costs.*

69.

No property in the custody of any officer of the court shall be delivered up without the order of the court; but such order may be entered, of course, by the clerk, on filing a written consent thereto by the proctor in whose behalf it is detained; and also after appraisal and bond duly executed.

70.

If, in possessory suits, after decrees for either party, the other shall make application to the court for a proceeding in a petitory suit, and file the proper stipulation, the property shall not be delivered over to the prevailing party until after an appraisal made, nor until he shall give a stipulation with sureties to restore the same property without waste, in case his adversary shall prevail in the petitory suit, and also to abide as well all interlocutory orders and decrees, as the final sentence and decree of the District Court, and, on appeal, of the appellate court.

71.

In all cases where a judgment or decree is entered on a bond or stipulation filed with the clerk for the appraised or agreed value of any property libelled in this court, the clerk shall receive, in addition to the amount of the bond, interest at the rate of six *per cent per annum*, for the time which shall inter-

* See Rules 10 and 11, in Admiralty, prescribed by the Supreme Court.

vene between the entry of the judgment, or date of the stipulation, and the day when the money shall be paid into court.

72.

A tender *inter partes* shall be of no avail on defence, or in discharge of costs, unless, on suit brought, and before answer, plea, or claim filed, the same tender is deposited in court, to abide the order or decree to be made in the matter.

73.

When tender is first made after suit brought, it must include taxable costs then accrued.

74.

No third party can intervene by claim, without proof of a subsisting interest in the subject-matter of the claim. This proof may, in the first instance, be the oath of the claimant, but subject to denial and disproof on the part of the libellant, on issue thereto or on summary petition.*

75.

Double pleas, or exceptions, replications to pleas, triplications or rejoinders, &c., may be filed without previous leave of the court, the pleading of several matters being restricted to cases in which the matters are distinct.

76.

Defence may be made by answer or claim, of matters of law or fact, without the employment of exceptions or special pleas usual in causes of civil and maritime jurisdiction, other than exceptions to the competency of the party or the process, or other matter of abatement.

77.

If matter of bar at law to the libel is set up by answer or claim, and allowed by the court, no costs shall be taxed for any other part of the answer or claim than that stating such bar.

78.

When the answer alleges a bar in law to the whole libel, it may be treated as a plea, and set down for hearing, without filing a replication other than to such bar, or going into proofs upon the issues in fact.

* See Rules 26 and 34, in Admiralty, prescribed by the Supreme Court.

79.

Where a party not required to answer intervenes by claim and answer, costs will be taxed for the claims only.

80.

When an answer is required, in a suit *in rem*, of a party having no interest in the subject-matter, he may file an exceptive allegation or disclaimer, and notice the same instanter for hearing. If the decree of the court is in affirmation of his plea, he shall be discharged the action with costs.

81.

One improperly joined as defendant, in an action *in personam*, may have a decree of discharge in the same manner; provided it is made satisfactorily to appear to the court that he can give material testimony as a witness in the cause.

82.

When the claim is in derogation of the right set up by the libel, it may form a general issue therewith, by denying "that the libellant is entitled to the remedy and relief in the premises sought by him," without traversing or admitting the several articles of the libel.*

83.

A general issue may be taken by answer, in like manner, when the answer is not required to be under oath.†

84.

So, also, the libel may be contested affirmatively, by a general issue instead of a formal demurrer.

85.

When a general issue is taken to the libel, in open court, on the return day of process, either party may have the cause placed upon the calendar instanter, and it may be called in its place for proofs, without other notice.

86.

Each party is entitled to like proceedings in such case, as if the cause had been noticed by each pursuant to the usual practice.

* See Rule 26, in Admiralty, prescribed by the Supreme Court.

† See Rule 27, in Admiralty, prescribed by the Supreme Court.

87.

A sworn answer is not to be deemed higher evidence than the libel or information to which it responds, unless made so by the act of the promovent. An answer need not be put in under oath, unless so required by a sworn libel, or one filed by the United States.*

88.

The matter set up by a sworn answer responsive to the allegations or interrogatories of the libel, shall be deemed admitted on the part of the libellant, unless within four days from the time the answer is perfected, or from the expiration of the time allowed for excepting thereto, replication is filed, or a written notice served on the proctor of the respondent, that, on the trial of the cause, proof will be offered on the part of the libellant, in opposition to the allegations of the answer. No replication need be filed for any other purpose, to an answer taking an issue in fact upon the allegation of the libel.†

89.

A claim or answer may be put in and filed at any time after the service of process and before defaults entered; and when it shall be put in at any other time than on making proclamation, notice of the time of filing it shall be given the libellant; otherwise, he shall not be bound to regard it.

90.

If separate answers or claims are put in by the same proctor, or by different proctors being connected in business, all costs thereby unnecessarily incurred shall be disallowed on taxation.

91.

An answer or claim on the part of the United States is to be put in without oath, by the District-Attorney, and is not subject to exception for insufficiency.

92.

In the case of bailable process *in personam*, unless the defendant appear and put in bail stipulation according to the rules of the court, his claim or answer may be treated as a nullity and his defaults be entered. An answer in such case shall be deemed filed from the time bail becomes perfected.

* See Rule 3, *ante*; and Rules 27 and 49, in Admiralty, prescribed by the Supreme Court.

† See Rule 53, in Admiralty, prescribed by the Supreme Court, by which the provisions of this rule are altered.

93.

On due proof that a claimant or respondent is absent from the United States, or resides out of the district, and more than one hundred miles from the city of New York, a claim or answer to a libel may be sworn to by a proctor or attorney in fact, in behalf of such party; and if, thereupon, the libellant, by written notice to the respondent, demands a personal answer verified by the oath of the party, proceedings shall stay a reasonable time to enable such answer to be taken by commission or *dedimus potestatem*. The provisions of this rule may, also, be applied to the verification of a libel, by the oath of a proctor or attorney in fact.*

94.

The defendant may, on the return day of process, and before answering, demurring, or pleading, file an exception to the libel, that it is multifarious or ambiguous or without plain allegations upon which issue can be taken; and, if it be adjudged by the court insufficient, for any of these causes, and be not amended by the libellant within two days thereafter, it shall be dismissed, with costs.†

95.

Proceedings upon such exceptions shall conform to those on exceptions to answers or other pleadings.‡

96.

The libellant may, within four days from the filing of the answer or claim, file exceptions thereto, for insufficiency, irrelevancy, or scandal, which exceptions shall briefly and clearly specify the parts excepted to, by the line and page of the papers in the clerk's office; whereupon, the party answering or claiming shall, in four days, either give notice to the libellant of his submitting to the exceptions, or set down the exceptions for hearing, and give four days' notice thereof, for the earliest day of jurisdiction afterwards. In default whereof, the like order may be entered as if the exceptions had been allowed by the court.‡

97.

If a party submit to exceptions for insufficiency, he shall answer further within four days after notice of his submitting. If the exceptions are allowed, on hearing, he shall answer further within such time as the court shall direct;

* See Rule 4, *ante*; and Rule, 26, in Admiralty, prescribed by the Supreme Court.

† See Rule 26, in Admiralty, prescribed by the Supreme Court.

‡ See Rules 23 and 36, in Admiralty, prescribed by the Supreme Court.

and, if the hearing of the exceptions shall not be duly brought on, or the further answer duly put in, the claim or answer excepted to shall be treated as a nullity, and the default of the party be entered.*

98.

If exceptions for irrelevancy be submitted to, or be allowed by the court, or the hearing be not duly brought on by the respondent, the matter excepted to shall be struck out of the claim or answer by the clerk.†

99.

Either party may propound interrogatories to the other, within four days from the putting in of the claim, or answer, or other pleading, and the perfecting of the same, if excepted to.‡

100.

A copy of the interrogatories shall be served on the party for whom the same are intended, or his proctor, if one be employed; and, if he object thereto, he shall notify the party serving the same, who shall, on due notice, submit the same to the judge for his allowance. The interrogatories allowed shall be filed with the clerk, and notice thereof be given, and the party shall file his answer thereto in ten days after such notice; in default whereof, if libellant, the libel shall be dismissed; if claimant or defendant, the claim or answer shall be treated as a nullity, and default may be entered against such party.‡

101.

Answers to interrogatories may be excepted to in the same manner as answers or claims put in by a defendant, and shall, in all respects, be subject to the provisions of the rules in relation to exceptions; and, if the libellant, making answers shall not perfect the same after exception, the libel shall be dismissed for want of prosecution. But this rule and the preceding one shall not in any case be deemed to require answers to interrogatories on the part of the United States, in suits brought in their behalf.‡

102.

The oath of calumny shall not be required of any party, in any stage of a cause.

* See Rules 23, 30, and 36, in Admiralty, prescribed by the Supreme Court.

† See Rule 36, in Admiralty, prescribed by the Supreme Court.

‡ See Rules 32 and 33, in Admiralty, prescribed by the Supreme Court.

103.

Suits may be joined or consolidated upon the same principle as in the practice of the court at common law.

104.

When various actions are pending, all resting upon the same matter of right or defence, the court, by order, at its discretion, will compel the parties to abide by the decision rendered in one case, and will enter a decree in the other causes conformably thereto, although there be no common interest between the parties.

105.

Commissions for taking testimony, if not sued out pursuant to the rules of the Circuit Court, shall be moved for in four days after the claim or answer is filed and perfected (if the same shall have been excepted to); but, if interrogatories shall be propounded for the other party, by the party who moves for a commission, he shall have four days for moving after the answers to the interrogatories shall be perfected; otherwise, such commissions shall not operate to stay proceedings; but, on a proper case shown, application for a commission may be made at any time after the action is commenced, and before issue joined, or after a default or interlocutory decree.*

106.

Affidavits on which a motion for a commission is made shall specify the facts expected to be proved, and the shortest time within which the party believes the testimony may be taken and the commission returned.

107.

A commission will not be allowed to stay proceedings if the opposite party admits in writing that the witnesses will depose to the facts stated in such affidavit; such affidavit, with the admission, may be read on the trial or hearing, and will have the same effect as a deposition to those facts by the witness or witnesses named.

108.

The motion may be noticed and made at term, before the court, or in vacation before the judge out of court, and only one commissioner will be named, unless special cause is shown for appointing a greater number, nor will costs be taxed for the services of more than one, except where both parties require a greater number.

* See Rules 41 to 50, both inclusive, of the Circuit Court.

109.

Interrogatories for the direct and cross examination, in case the parties disagree respecting them, shall be presented to the judge for his allowance at one time, and one day's notice of such reference shall be given by the party objecting to the opposite interrogatories.

110.

Cross-interrogatories shall be served within four days after the direct have been received, or they shall be regarded as assented to, and, if no notice of reference to the judge is given within five days after both direct and cross interrogatories have been served, each party shall be deemed to have assented to the interrogatories served.

111.

The interrogatories, direct and cross, as agreed to by the parties or settled by the judge, shall be annexed to the commission.

112.

Directions as to the execution and return of the commission, signed by the clerk, and the proctor of the party moving it, or of both parties, if both unite in the commission or if both propose interrogatories, shall accompany the commission.

113.

Depositions taken under commissions, or otherwise, shall be forwarded to the clerk immediately after they are taken, and be filed on their return to the clerk's office, in term or vacation, and notice thereof shall be forthwith given by the party filing them to the proctor of the opposite party. And all objections to the form or manner in which they were taken or returned shall be deemed waived, unless such objection shall be specified in writing in four days after the same are opened, unless further time shall be granted by the judge.

114.

In suits between individuals, either party may, at any time after the commissions or depositions are deposited with the clerk, enter an order of course, as of a special sessions, if in vacation, to open the same and deliver copies thereof.

115.

In suits on seizures, in which the United States are a party, such order may be entered on the written consent of the proctors or attorneys of the respective parties, or on motion to the court at a stated or special session.

116.

Opening such commissions or depositions shall not preclude either party from objecting to the competency or relevancy of the evidence when offered on trial.

117.

Exceptive allegations to the credibility or competency of witnesses examined on deposition or commission, may be filed within four days after the depositions or commissions are opened at the clerk's office, and notice shall be given forthwith of such exceptions.

118.

Testimony impeaching or supporting the witnesses may, in such case, be given by the parties respectively, on the hearing of the cause, and may be taken in the same manner as proofs in chief.

119.

Depositions *in perpetuam rei memoriam*, to be used in this court, may be taken under a *dedimus potestatem*, or by any officer authorized by Act of Congress to take depositions *de bene esse*, to be used in the Courts of the United States, in like cases and by like proceedings as is now authorized by the Supreme Court of the State of New York.

120.

Notices of trial, argument, or hearing, may be for any day in term, the court being then sitting (including days to which the court may stand adjourned), upon a sufficient excuse for not giving notice for the first day of the term.

121.

In all issues brought to trial, argument, or hearing, except as provided in these rules, four days' previous notice shall be served on the attorney or proctor of the opposite party, when the attorney or proctor resides in this city; in all other cases, posting such notice conspicuously in the clerk's office shall be a sufficient service.

122.

A note of the pleadings and of the date of the issue shall be served on the clerk, with a notice of the hearing, four days before the time of hearing, and such notices shall also specify the pleadings, and whatever papers or documents in his office shall be required by the parties to be produced by the clerk at the trial.

123.

So soon as issue is joined, the respondent or claimant may notice the cause for hearing on his part, and be thereupon entitled to a decree dismissing the same, with costs, or such other decree as the case may demand, unless the libellant shall also notice the cause for the same time, and proceed to trial or hearing, or obtain a continuance by order of the court, on proper cause shown.*

124.

When either party shall require *viva-voce* testimony given in open court, to be taken down by the clerk pursuant to the Act of Congress, it shall be taken in the same manner as in jury trials on common law issues, and not *verbatim*, as in depositions *de bene esse*.†

125.

The notes of the judge may, by assent of parties, be used as if taken down by the clerk.‡

126.

Either party desiring to diminish, vary, or enlarge the minutes of proofs taken by the clerk or judge, may, within two days after the trial, serve a statement of proofs on the proctor of the opposite party, and such statement, if assented to, or, if no amendments are proposed thereto, within two days thereafter, by such proctor, shall be regarded the true minutes of the testimony given, and the notes of the judge or clerk be corrected in conformity thereto.‡

127.

If amendments are proposed and the parties do not agree therein, the statements and amendments shall be forthwith referred to the judge, and he shall settle or determine how the facts are, and the statement thus settled or adjusted shall be filed as the true minutes of the testimony given.‡

128.

In cases of demands arising not *ex delicto*, on a decree in favor of the libellant by default or on hearing, it shall be referred to the clerk to compute and ascertain the amount due the libellant, but reference may also be made in cases of tort, or on allegations of incidental or consequential damages, if desired by either party.

* See Rule 183, *post*; and Rule 39, in Admiralty, prescribed by the Supreme Court.

† See Rule of November 17, 1868, *post*; and Rule 51, in Admiralty, prescribed by the Supreme Court.

‡ See Rule of November 17, 1868, *post*.

129.

In case of the absence of the clerk, or his incompetency, from interest or otherwise, or upon any sufficient cause shown, such reference may be made to assessors, or otherwise, according to the course and custom of courts of civil and admiralty jurisdiction.

130.

On such reference, either party may produce and use the pleadings and proofs filed in the cause or heard in court, and other competent proofs pertinent to the matter of reference.

131.

The clerk shall allow neither party longer than ten days from the order of reference to complete the proofs thereon, without the special order of the judge.

132.

At the instance of either party, the clerk shall report the additional testimony received by him and the offer of testimony rejected (if any) by him.

133.

Either party may except to the clerk's report and set down the exceptions for hearing, on two days' notice, at the first stated or special sessions after the report is filed.*

134.

Upon the coming in of the report, a decree of confirmation may be entered, on motion, without notice, unless otherwise ordered by the court, or the report shall be excepted to; and, in the latter case, the exception shall be overruled or held abandoned, unless brought to a hearing at the first stated or special sessions of the court for which it can be noticed.†

135.

If the libellant takes no proceedings upon the report within four days after the filing thereof in open court, the respondent may move the court to dismiss the libel, for want of due prosecution.†

136.

If the promovent in a libel or information neglects to proceed in the cause with the dispatch the course of the court admits, the respondent or claimant

* See Rules of December 1, 1847, *post*; and Rule of May 21, 1868, *post*.

† See Rules of December 1, 1847, *post*.

may have the libel or information dismissed on motion, unless the delay is by order of the judge or the act of the respondent or claimant.*

137.

Four days' notice shall be given of the application to dismiss the action, and a copy of an affidavit, or a certificate of the clerk, that no proceedings have been taken, be served at the same time.

138.

A special session of the court (besides the sittings on Tuesday each week) may be opened at any time *instantly*, on the allowance of the judge, for hearing and disposing of special motions, arguments on questions of law, and also for taking proofs, or hearing admiralty and maritime or revenue causes, and rendering interlocutory or final decrees therein.

139.

No party shall be compelled to take or meet proceedings at a special sessions (without the order of the judge previously served on him), in other than civil causes of admiralty and maritime jurisdiction.

140.

A guardian *ad litem* will be appointed, on a petition, verified by oath, stating a proper case for such appointment; and the guardian shall give stipulations for costs, &c., the same as if he was personally the party in interest.

141.

Infants may sue by *prochein ami*, to be first approved by the court; the *prochein ami* to give stipulations and be responsible for costs, in the same manner as the infant would be if of full age.

142.

Suits can only be prosecuted or defended in *forma pauperis* by express allowance of the court. In such case, the pauper will be discharged of all stipulations or liabilities for costs.

143.

But the court, on satisfactory proof of the inability of a party to comply with the usual stipulations in a cause, may mitigate and modify such stipulations conformably to the equities or exigencies of the case.†

* See Rule 123, *ante*; and Rule 39, in Admiralty, prescribed by the Supreme Court.

† See Rule 6, in Admiralty, prescribed by the Supreme Court.

144.

Where proceedings on a decree shall not be stayed by an appeal, and the decree shall not be fulfilled or satisfied in ten days after notice to the proctor of the party against whom it shall be rendered, it shall be of course to enter an order that the sureties of such party cause the engagement of their stipulation to be performed, or show cause in four days, or on the first day of jurisdiction afterwards, why execution should not issue against them, their lands, goods, and chattels, according to their stipulation; and, if no cause be then shown, due service having been made on the proctor of the party, a summary decree shall be rendered against them on their stipulations, and execution issue; but the same may be discharged on the performance of the decree and payment of all costs.*

145.

A party obtaining a decree of the court, may, at his election, have, for the execution thereof, like process as is now used in this State for like purposes, except that of personal attachment, as for a contempt of court.†

146.

The writ of *fiery facias* or *venditioni exponas* is adopted as final process, in this court, in all cases for the sale of property; and the proceedings thereon, in admiralty cases, shall be conformable to those on the common law side of the court.†

147.

Whenever, from the death of any of the parties, or changes of interest in the suit, defect in the pleadings or proceedings, or otherwise, new parties to the suit are necessary, the persons required to be made parties may be made such either by a petition on their part or by the adverse party.

148.

In either mode, it shall be sufficient to allege briefly the prayer of the original libel, the several proceedings in the cause and date thereof, and to pray that such persons required to be made parties to the suit may be made such parties.

149.

On service of a copy of such petition and of notice of the presenting thereof, such order shall be made for the further proceeding in the cause as shall be

* See Rule 3, in Admiralty, prescribed by the Supreme Court.

† See Rule 21, in Admiralty, prescribed by the Supreme Court.

proper for its speedy and convenient prosecution as to such new parties, and the same stipulations and security shall, in all such cases, be required and given, as in cases of persons becoming originally parties to a suit.

150.

A party shall not be held to enter his appeal from any decree or order of the court as final, unless the same is in a condition to be executed against him without further proceedings therein in court.*

151.

Ten days from the time of rendering the decree shall be allowed to enter an appeal, within which time the decree shall not be executed. A brief notice in writing to the clerk and opposite proctor, that the party appeals in the cause, shall be a sufficient entry of the appeal, without any petition to the court for leave to enter the same.†

152.

When an appeal shall be entered, the appellant shall, within ten days thereafter, give security for damages and costs; and, if security shall not be given within that time, the decree may be executed as if there had been no appeal, unless further time be allowed by the court.

153.

The appellant shall give four days' notice to the adverse party, or his proctor, of the person or persons proposed as his sureties, with their additions and descriptions, and of the time and place of giving the stipulation.

154.

When an appeal shall be entered, the appellant shall cause the proceedings of the court, required by law to be transmitted to the Circuit Court, to be transcribed for that purpose within thirty days after the appeal shall be entered in this court; and, in default thereof, the decree shall be executed as if there had been no appeal, unless the court shall, upon special motion of the appellant, otherwise order.‡

155.

A rehearing will not be granted in any matter in which a decree has been rendered, unless application is made at the term when the decree is pronounced, or there is a stay of proceedings by order of the judge.§

* See Rule 45, in Admiralty, prescribed by the Supreme Court; and Rule 117, of the Circuit Court.

† See Rule 45, in Admiralty, prescribed by the Supreme Court.

‡ See Rule 53, in Admiralty, prescribed by the Supreme Court.

§ See Rule 40, in Admiralty, prescribed by the Supreme Court.

156.

No libel of review will be entertained in cases subject to appeal, nor unless filed before the enrolment of the decree or return of final process issued in the cause.

157.

When any moneys shall come to the hands of the marshal under or by virtue of any order or process of the court, he shall forthwith pay over the gross amount thereof to the clerk, with a bill of his charges thereon, and a statement of the time of the receipt of the moneys by him, and, upon the filing of such statements, and the taxation of such charges, the same shall be paid to the marshal out of such moneys; and the general account of all property, sold under the order or decree of this court, shall be returned by the marshal and filed in the clerk's office, with the execution or other process under which the sale was made.*

158.

All bills of costs and of charges to be paid under any order or decree of this court, shall be taxed and filed with the clerk before payment thereof; and, if the same shall include charges for disbursements other than to the officers of the court, the proper and genuine vouchers, or an affidavit therefor (in cases of loss of vouchers), shall be exhibited and filed, and, if such bill shall be taxed without four days' notice to all parties concerned, they shall be subject to a re-taxation, of course, on application by any such party, not having had notice, and at the charge of the party obtaining such taxation.

159.

The clerk is authorized to tax or certify bills of costs and to sign judgments, and also take acknowledgments of the satisfaction of judgments, and all affidavits and oaths out of court, as in open court, in all cases where the same are not required by law to be taken in open court.

160.

The deputies or chief clerks of this court, not exceeding two in number, and named and designated by an appointment filed in the office of said clerk, are each authorized to sign judgments, to tax and certify all bills of costs in this court, other than those of the clerk, and also to affix the seal of the court and certify proceedings or papers in the name of the clerk, in all other cases than exemplifications of the records or files of the court, and to perform all duties appertaining to the clerk by the appointment of the court, or the course of

* See Rule 41, in Admiralty, prescribed by the Supreme Court.

practice, which are not specifically appointed by statute to be performed by the clerk.*

161.

The clerk is authorized to enter satisfaction of record of any judgment rendered in this court in behalf of the United States, on filing acknowledgment of satisfaction of the same duly made by the District-Attorney.

162.

All rules to which a party is entitled of course, or which are moved for upon the written consent of the parties, may be entered by the clerk in vacation, without the mandate of the judge, and be entitled as of a special court held on that day.

163.

Proctors of any Circuit or District Court of the United States, and attorneys of the Supreme Court of this State, and solicitors of the Court of Chancery, may be admitted attorneys and proctors of this court, and counsellors of the said Supreme Court and Court of Chancery, and counsellors and advocates of said Circuit or District Courts, may be admitted counsellors and advocates of this court, of course, upon taking the oaths prescribed by the Constitution and laws of the United States.

164.

In admiralty and maritime causes, wherein the matter in demand does not exceed fifty dollars, the proceedings for recovery thereof may be summary.†

165.

Instead of filing a libel, the promovent, in suits by individuals, may, by short petition, state the matter of his demand, and the amount or value thereof, or present an account stated, or a bill of charges by items, on filing either of which, process may issue, as on the filing of a libel in ordinary cases.†

166.

The same petition or statement used on application for a summons pursuant to the Act of Congress of July 20, 1799, § 6, shall when admiralty process is ordered by the judge or justice of the peace, be filed and may stand and be proceeded upon in lieu of the libel in form.†

* This rule is printed as amended by a rule made March 26, 1841.

† See Rules of June Term, 1849, *post*.

167.

Any party intervening may contest the petition or demand orally or in writing, by general denial or affirmance, or file a plea in bar, or answer or claim.*

168.

No costs shall be taxed the defendant for any plea, answer or claim, other than a general issue to the actor's demand, unless an answer on oath be demanded.*

169.

Either party may file interrogatories to be propounded to his adversary, which shall be answered on oath.*

170.

The monition, or citation, or attachment, may be made returnable the first day of a stated or special session of court next succeeding the service thereof, at least three days intervening between the service and return of process *in rem*, in suits by individuals, and fourteen in suits by the United States; and, on the return of process, in open court, duly served, the cause may be put instanter upon the calendar, and either party, without other notice may proceed therein to proofs and hearing; and the party obtaining a continuance of the cause, if *in rem*, shall bear all expenses taxed for keeping the thing attached, intermediate such continuance and the final hearing.†

171.

The notices to be published, in suits by individuals, need contain only the title of the suit, the cause of action, the amount demanded, and the day and place of the return of the monition, and be subscribed with the name of the marshal and proctor of the libellant. No more than the usual printer's charge for advertisements of like size shall be taxed for the publication.†

172.

In summary proceedings *in rem*, in behalf of the United States, when the goods are under seizure by the collector and in his possession, the clerk, at the instance of the District-Attorney, may omit the attachment clause in the monition issued.‡

* See Rules of June Term, 1849, *post*.

† See Rules of June Term, 1849, *post*; and Rule 9, in Admiralty, prescribed by the Supreme Court.

‡ See Rules of June Term, 1849, *post*.

173.

If the monition also contains an attachment in such cases, and the marshal returns that the goods, &c., are in the custody of the collector, he shall stand acquitted of all responsibility for their safe keeping or production to answer the decree.*

174.

In such case, the service of the monition shall be by leaving a copy, or notice thereof, with the collector or person having the goods in keeping, and also making like service on the owner, or his agent, if known to the marshal, and resident in the city.*

175.

The costs to be taxed the District-Attorney, proctor, and advocate, on either side, in a summary cause, shall not exceed twelve dollars.*

176.

Fees shall not be taxed for more than one witness to prove the same facts, unless it appears that the witness was impeached or his testimony contradicted. No charges for serving writs of subpoena shall be taxed against the opposite party, when the writ is executed by the marshal. If a witness does not attend after regular summons, proceedings for attachment may be had against him, without the service of a writ of subpoena.*

177. .

The provisions of the twelve preceding rules, are limited to those cases of admiralty and maritime jurisdiction, in which no appeal lies from this court to the Circuit Court.*

178.

Summary proceedings in all respects, not specified in the preceding rules, are to be governed by the general course of procedure of the court.*

* See Rules of June Term, 1849, *post*.

PRACTICE IN INFORMATIONS.

179.

Informations on seizures upon land or water are to be drawn in a plain and concise form, only referring to, without reciting, statutes or sections of statutes at large. The information should set forth the gravamen of the suit by plain and issuable allegation; and, when *in rem*, the property demanded as forfeited is to be specified, together with the alleged cause of forfeiture. Informations are subject to the same general rules, as to their structure and amendment, as ordinary libels.*

180.

Proceedings *in rem* for a forfeiture, and *in personam* for an offence, fine, penalty, or debt, may be joined in one information, when having relation to the same transaction.

181.

On filing an information *in personam* or *in rem*, the clerk shall issue process thereon, corresponding as nearly as may be with that employed in the instance Court of Admiralty in similar cases. But process *in personam* may be, in the first instance, a *capias*, or attachment against goods to compel an appearance, or a monition, at the election of the complainant.

182.

No party shall be held to bail on an information *in personam* without the mandate of the judge, except where bail is required or authorized by statute.

183.

All rules applicable to the service of proceedings in relation to process in plenary causes in admiralty, shall equally apply to process on informations.†

184.

. If the information filed is multifarious or ambiguous, or does not supply plain allegations upon which issue can be taken, or a distinct reference to the statute upon which it is founded, the defendant or claimer may move the court to have it reformed, giving two days' previous notice, together with a specification of the exceptive parts, to the District-Attorney or proctor in whose name it is

* See Rule 22, in Admiralty, prescribed by the Supreme Court.

† See Rule 123, *ante*.

filed. It may be amended of course, in conformity to such notice; if not reformed within two days after pronounced defective by the court, the defendant may take an order of discharge from the action.

185.

Amendments may be had to informations, in any stage of the cause; but, if after an issue is formed between the parties, it shall be on payment of all costs which may have accrued by means of the amendment or the defective pleading.

186.

In informations *in rem*, a delivery, on stipulation of property seized, or a sale of perishable articles, may be had, as in case of proceedings in the instance Court of Admiralty.

187.

The claimer shall appear and interpose his claim or plea, on informations *in rem*, within the same time and in the same manner as in causes on the instance side of the Court of Admiralty; and shall appear and plead to informations *in personam* within the same time and in the same manner as in causes at common law; but no plea other than in abatement, the general issue, former recovery, pardon or remission of the offence, fine or forfeiture, shall be received.

188.

Instead of a traverse of each separate cause of forfeiture alleged in the information, the defendant may plead, as a general issue to an information *in rem*, "that the several goods in the information mentioned did not, nor did any part thereof, become forfeited in manner and form as in the information in the behalf alleged."

189.

Putting in and justifying bail on behalf of the defendants on arrest, and the proceedings to and on trial and execution, where a trial by jury must be had, shall be the same as in cases of common law jurisdiction.

238.

All notices served on an agent, or on attorneys or proctors residing out of the city and county of New York (and not having an office or place of business in this city, in Brooklyn, or Williamsburg) shall be double the time ordinarily required.

240.

In all cases not provided for by the rules of this court, the rules of the Circuit Court of the United States for this District, for the time being (whether adopted before or after these rules), so far as the same may be applicable, shall regulate the practice of this court; and, when there is no rule of the Circuit Court to apply, then the rules of the Supreme Court of this State, now in force, so far as the same may be applicable, shall govern.

241.

The arrangement of rules under distinct heads of practice, is not to prevent their governing every mode of procedure in court to which they may be applicable; but, if differing provisions are adopted, the rules in collision are to be restricted each to the head of practice under which it may be classed.

APRIL 16, 1847.

Ordered, That the standing Rule No. 45, of this court, in Admiralty, be hereafter applied alike to suits in *personam* and in *rem*.

DECEMBER 1, 1847.

No decree shall be entered by default, or consent of parties in court, ordering the condemnation and sale of property arrested on process *in rem*, or for the distribution of the proceeds thereof in court, or of the avails of a stipulation or bond given for the value of such property, unless publication, according to the course of the court, shall have been duly made before the return day of the monition issued with the attachment in the case.

All reports of commissioners, assessors, adjusters, &c., on the matters referred by order of the court, shall be filed in court, at the opening of the court, on Tuesdays of the stated or special terms, unless otherwise specially allowed by the court, and on two days' previous notice in writing to the party to be affected thereby.

Exceptions to such reports shall be filed before or at the time confirmation thereof is moved in court, unless further time is allowed by order of the court, and no exception to any report can be received on file without the party offering it has duly filed stipulations in the cause, according to the course of the court (unless he be excused by the standing rules from stipulating).

FEBRUARY 9, 1849.

Ordered, That the commissioners appointed by the Circuit Court of the United States for the Southern District of New York, to take affidavits, bail, &c., under the several Acts of Congress, be Commissioners authorized by this court to do all the acts, and exercise, and be vested with all the powers, jurisdiction, and authority contained in and conferred by the Act of Congress of the United States, passed August 12, 1848, and entitled "An Act for giving effect to certain treaty stipulations between this and foreign Governments, for the apprehension and delivering up of certain offenders."

JUNE TERM, 1849.

To prevent unnecessary multiplication of suits, and the accumulation of costs, for the recovery of seamen's wages, the following additional Rules in summary actions are adopted: —

Rule 1. — In suits *in personam* for wages, where the amount sworn to be due, in the libel, is less than fifty dollars, the clerk shall not issue process without the usual stipulation for costs, unless the libel be accompanied by satisfactory proof that the respondent is about to leave the district; or by an allocatur of the judge, or by a certificate of a commissioner of the court, that, upon due service of a summons to the respondent to appear before him, sufficient cause of complaint whereon to found process appeared.

Rule 2. — Such summons shall be served at least one day previous to the day of hearing therein mentioned, and, if it shall appear, on the hearing, to the satisfaction of the commissioner, that the wages claimed have been paid or forfeited, he shall refuse the certificate. And, if a reasonable offer of compromise shall be made on such hearing, by either party, and be rejected by the other, the commissioner shall add a certificate of such fact, and, in case of final recovery by the party rejecting such offer, he shall recover no costs. No costs shall be taxed for the proceeding, unless the commissioner shall certify that a demand of wages was made by the seamen a reasonable time previous to taking out the summons, and then the proctor shall be allowed no more than \$1.25, the ordinary fees for attendance and motion in court.

Rule 3. — No fees shall be taxed to the marshal, clerk or witness on such proceedings, unless, by special mandate of the judge, a subpoena or attachment is issued to compel the attendance of witnesses.

Rule 4. — The commissioner's fees for his services thereon shall not exceed one dollar for a single sitting, and every adjournment granted shall be at the expense of the party obtaining it; if, however, it is required by the parties that the commissioner take down in writing the testimony heard on the summons, he shall be allowed therefor the customary fees for like services. Proof so taken in writing may be used by either party, on the hearing in court, in case the suit is further prosecuted.

Rule 5. — No more than one process shall issue against the master or owners, at the same time, for wages claimed by a crew, or any part thereof, for the same voyage, nor during the pendency of a suit therefor, nor shall costs be taxed for more than one retainer or libel, in such cases, unless an order of the judge, on cause shown, be previously had, authorizing suits therefor. Seamen claiming wages for the same voyage may file an affidavit stating the amount due them, and, if such affidavit be filed before the issue of process, the clerk may order the respondent to be held to bail in a sum exceeding by \$100 the whole amount of such claims.

Rule 6. — The bail or stipulation given by the master or owner, on such process, shall be conditioned to abide the order of the court in the particular suit, and in favor of such other parties as the court may grant leave to join therein.

DECEMBER 23, 1850.

No counsel will be permitted to speak, in the argument of any cause in the court, more than one hour, without the special leave of the court, granted before the argument begins.

MARCH 2, 1852.

No case, after being called on the docket, will be allowed to retain its priority, except for the cause of sickness of some one whose attendance upon it is necessary, or because of other inevitable accident, nor will a case so called be assigned for hearing at a future day but for like causes.

Each Saturday of the term is assigned for hearing special motions, and the docket will not be called on those days.*

JANUARY TERM, 1857.

All cases placed upon the day docket shall be deemed set down absolutely for hearing or trial upon that day, and no motion for postponing such cases, or assigning them for hearing on a different day, will be entertained by the court, except for causes not existing, or not known to the party making the application, at the time the case was put upon the day docket.

Cases must be put upon the day docket in the order they stand on the term calendar, unless otherwise directed by the court, for cause shown prior to the making up of the day docket.

Cases on the day docket shall retain their priority from day to day, until called for hearing, and shall have preference to assigned cases; and each case not moved to hearing in its place shall go to the foot of the term calendar.†

OCTOBER 1, 1867.

Hereafter, to obtain the approval of the judge of this court, of the sufficiency of sureties to bonds or stipulations offered for the discharge of vessels under arrest, upon attachments issued out of this court, it shall be necessary to give notice in writing, a reasonable time previous to the application, to the proctor of the libellant in the action, stating the time and place application will be made for such approval, and the name, occupation, and residence of the sureties to be offered; and the application shall be accompanied by an affidavit proving the service of such notice.

MAY 28, 1859.

Costs taxable to Commissioners appointed and acting on references, under Rule 44 of the Rules of Practice for the Courts of the United States in Admiralty and Maritime Jurisdiction, prescribed by the Supreme Court of the United States at

* See Rules of January Term, 1857, *post*; and Rules of February 22, 1868, *post*.

† See Rules of March 2, 1852, *ante*; and Rules of February 22, 1868, *post*.

the January Term, 1845, and under the Rules of Practice in Admiralty, adopted by the District Court of the United States for the Southern District of New York.

It being made a question of taxation, what fees or compensation may be lawfully allowed to said officers, for services rendered by them, under their appointments by authority of the above Rules of Court; and it appearing that the Act of Congress entitled, "An Act to regulate the fees and costs to be allowed Clerks, Marshals, and Attorneys of the Circuit and District Courts of the United States, and for other purposes," approved February 26, 1853 (10 United States Stat. at Large, 161), makes no provision for compensating commissioners appointed by the courts under the aforesaid rules for their services rendered in aid of the administration of justice, in the matters and cases therein specified; and we being of opinion that these special officers of the court do not come strictly within the Act, and that, upon the usages and doctrines of Courts of the United States, officers called upon to render services in those courts, according to their rules and modes of practice, for which no specific fees or costs are appointed by statute law, will be awarded compensation therefor by the courts respectively in which the services are performed, corresponding in amount to that allowed by law in the State, for similar services rendered by State officers, in a like capacity, particularly in chancery procedurs (1 Blatchf. C. C. R. 652; *Hathaway v. Roach*, 2 Woodb. & M., 63); and it further appearing to us that such is an equitable and sound rule to be applied in relation to this class of officers, especially as the above cited statute law of costs contains no prohibition of compensation to them by authority of the courts otherwise than through a positive appointment by statutory law: We are, therefore, of opinion, that such commissioners are entitled to have taxed in their behalf, by the proper taxing officers, the rate of fees or costs allowable in the Court of Chancery of the State of New York, to Masters in Chancery of that court, for services therein performed by them, on the 1st of September, 1845, being the time the Rule of Practice aforesaid adopted by the Supreme Court went into operation, unless in particulars in which the rate of allowance then prevailing in the State court shall have been rescinded or modified by subsequent regulations made by orders of the Courts of the United States; and we designate as proper subjects of taxation, in cases where those services have been actually performed by such Commissioners, in admiralty and maritime causes referred to them pursuant to the aforesaid rules, the following items, embraced in the Rules and Orders of the Court of Chancery of the State of New York, revised and established by Chancellor Walworth in 1844, under the head of "Master's Fees" (pages 190, 191), to wit:

Commissioners' Costs.

For signing every summons for a witness or party to attend a reference, *twelve cents.*

For attending at the time and place, and adjourning the same at request, or upon reasonable cause, *one dollar.*

Attendance and hearing every argument upon any matter referred to him, when litigated, *three dollars*; and when he proceeds *ex parte*, *one dollar*.

Attendance and settling his report after argument, if both parties attend and litigate the same, *three dollars*; if he proceeds *ex parte*, *one dollar*.

For writing out and certifying the testimony of witnesses taken orally before him on the hearing, to file with his report, for every folio of 100 words, *twenty cents*.

Copies of the same, furnished, on request, to either party, for each folio, *ten cents*.

Drawing every report in pursuance of an order of reference to him (exclusive of schedules and the written proofs), for every folio, *twenty cents*.

Drawing all schedules to be annexed to reports, for every folio, *ten cents*.

Copies of reports and schedules, to be filed, for every folio, *ten cents*.

Copies of reports and schedules and all other proceedings, furnished by him to the parties, upon request, for every folio, *six cents*.

Marking every exhibit produced before him on a reference, with the title of the cause, and signing the same, *six cents*.

S. NELSON.

SAM'L. R. BETTS.

FEBRUARY 7, 1863.

The Rules governing the practice of the court, on the instance side, in Admiralty, shall not authorize interlocutory decrees, in suits *in rem*, taken by default, on the return of process, to direct the sale of the *res* condemned thereby, before the sum chargeable thereon be decreed by the court, unless by consent of the parties in interest, or the express order of the court, because of the perishing or perishable condition of the *res*.

APRIL 26, 1865.

In all cases, where, by the rules of this court, a surety is required to be resident in this District, the rules are so modified as to require the surety to be resident in this District or in the Eastern District of New York.*

FEBRUARY 22, 1868.

I.—The calendar of admiralty causes shall hereafter be permanent, the causes being re-numbered every January. Notices of trial shall be notices of four days, and for the first Tuesday of the term, and shall not be required, except when a cause shall be placed upon such calendar.

II.—A calendar shall be made up by the clerk before the next March term. The causes in which either party shall file a note of issue on or before the Thursday before the opening of the March term, containing the date of the issue, shall be placed on the calendar according to the dates of the issues. Thereafter causes shall be placed on the calendar by the clerk in the order in which notes of issue shall be filed by either party.

III.—Causes may be generally reserved or set down for any particular day in term, except Saturdays, by consent of parties; but no cause shall be so reserved

* See Rules 44 and 59, *ante*.

or set down after the same shall be placed upon the day calendar, except upon the order of the court. When a cause shall be called in its order upon the day calendar without being tried, the same shall go to the foot of the calendar, and the issue shall thereafter be of that date, unless otherwise ordered by the court at the time of being passed.

IV.— There shall be a day calendar prepared, which shall be posted in one or more conspicuous places in the building in which the court-room is situated, by three o'clock of the day previous (excluding Saturday), and no more than seven causes shall be placed upon the day calendar for any one day, and they shall be placed upon such day calendar according to the dates of their several issues.

V.— A cause generally reserved, may, by order of the court, upon application, and upon notice of two days, be placed upon the day calendar for trial for any day which the court, upon such application, shall direct, subject to the provisions of Rule IV., and not to be tried before, by its issue, it shall be entitled to be called upon such calendar, except, that the court may, for special and peculiar reasons, give a cause the preference; and, also, except, that actions for seamen's wages and for salvage, and actions where the property shall actually be in the custody of the marshal, shall have the preference, and shall be placed upon the calendar with such preference, upon any day the court shall, upon application, direct.

VI.— Causes called on the day calendar, may, for cause shown, be set down for a later day in term, or marked off for the term, without prejudice; and causes which so go off for the term without prejudice, shall take their places, in order at the head of the calendar for the next term.

VII.— When a cause that has been generally reserved is put on the day calendar, the clerk shall receive the usual fee for filing a note of issue.

VIII.— All rules and parts of rules heretofore adopted by this court, not consistent with the foregoing, are hereby repealed.

MARCH 2, 1868.

The following regulations are adopted as Rules, by the District Court :

Supplement to Instructions, Series 3, No. 12. Additional regulations respecting suits arising under the Internal Revenue laws. Treasury Department, office of Internal Revenue, Washington, February 26, 1868. Information having been, from time to time, received at this office, to the effect that distillation of spirits has been allowed in distilleries which were at the time in custody of the United States marshal, through the connivance of the person or persons employed by the marshal as keeper, — It is hereby ordered, that, in all cases where a marshal takes possession of a distillery, by virtue of a process issued for violation of the Internal Revenue laws, he shall immediately cause the head of the still to be taken off, or the machinery to be disconnected, in such manner as to render it impossible for distillation to be carried on. The expenses arising out of compliance with this order should be returned by the marshal as

* See Rules of March 2, 1852, *ante*; and Rules of January Term, 1857, *ante*.

a part of his disbursements in the cause. It is further ordered, that, whenever any premises are held in custody by the marshal, under process issued for violation of the Internal Revenue laws, admission to such premises shall at all times be permitted for any Internal Revenue officer who would be entitled to admission were the same not in custody of the marshal. E. A. Rollins, Commissioner. Approved, H. McCulloch, Secretary of the Treasury.

MAY 11, 1868.

Exceptions to pleadings or to commissioners' reports, will be heard on Saturdays, on proper notice, without being placed on the calendar.

NOVEMBER 10, 1868.

In taking testimony, all Masters, Examiners, Referees and Commissioners, shall, when testimony is written down by question and answer, number the questions put to each witness, continuously, from the commencement of his direct examination to the final close of his examination, direct and cross.

NOVEMBER 17, 1868.

The clerk of this court, in making up the record to be transmitted to the Circuit Court, on an appeal, in pursuance of Rule No. 53, adopted by the Supreme Court at the December Term, 1854, as one of the rules for regulating proceedings in admiralty, shall not include in such record, as any portion of the testimony on the part of any party, any statement or report of any testimony given *via voce* in open court, unless such testimony shall have been taken down in accordance with Rules 124 and 125 of this court, and shall have become the true minutes of such testimony, in accordance with Rules 124, 125, 126, and 127 of this court; and no consent of parties shall be of any avail to dispense with or vary so much of said Rules 124 and 125 as requires such *viva-voce* testimony given in open court, to be taken down in the same manner as in jury trials in common law issues, and not *verbatim*, as in depositions *de bene esse*.

Whenever such testimony shall be taken down by the clerk, the legal fees chargeable by him therefor shall be taxable as part of the costs in the cause.

PRIZE RULES.

1.

There shall be issued, under the seal and authority of this court, commissions to such persons as the court shall think fit, appointing them severally commissioners to take examinations of witnesses in prize causes *in preparatorio* on the standing interrogatories, which have been settled and adopted by this court, and all other depositions which they are empowered to require, and to discharge such other duties in relation to ships or vessels, or property brought

into this district as prize, as shall be designated by the said commissioners and the rules and orders of this court.

2.

The captors of any property brought into this district as prize, or some one on their behalf, shall without delay give notice to the district judge, or to one of the commissioners aforesaid, of the arrival of the property, and of the place where the same may be found.

3.

Upon the receipt of notice thereof from the captors or district judge, a commissioner shall repair to the place where the said prize property then is; and if the same be a ship or vessel, or if the property be on board a ship or vessel, he shall cause the said ship or vessel to be safely moored in sufficient depth of water, or in soft ground.

4.

The commissioner shall, in case the prize be a ship or vessel, examine whether bulk has been broken; and if it be found that bulk has been broken, one of the said commissioners shall take information upon what occasion or for what cause the same was done. If the property captured be not a ship or vessel, or in a ship or vessel, he shall examine the chests, packages, boxes or casks containing the subject captured, and shall ascertain whether the same has been opened, and shall in every case examine whether any of the property originally captured has been secreted or taken away subsequently to the capture.

5.

The commissioner in no case shall leave the captured property until he secure the same by seals upon the hatches, doors, chests, bales, boxes, casks, or packages, as the case may require, so that they cannot be opened without breaking the said seals; and the said seals shall not be broken, or the property removed, without the special order of the court, excepting in case of fire and tempest, or of absolute necessity.

6.

If the captured property be not a vessel, or on board a vessel, the commissioner shall take a detailed account of the particulars thereof, and shall cause the same to be deposited under the seals as aforesaid, in a place of safety, there to abide the order or decree of this court.

7.

If no notification shall, within reasonable time, be given by the captors, or by any person in their behalf, of any property which may be brought as prize within this district, and the commissioners, or either of them, shall become informed thereof, by any means, it shall be the duty of the said commissioners, or one of them, to repair to the place where such property is, and to proceed in respect to the same, as if notice had been given by the captors.

8.

The captor shall deliver to the judge at the time of such notice, or to the commissioner or commissioners, when he or they shall, conformably to the foregoing rule, repair to the place where such captured property is, or at such other time as the said commissioners, or either of them, shall require the same, all such papers, passes, sea-briefs, charters, bills of lading, cockets, letters and other documents and writings as shall have been found on board the captured ship, or which have any reference to, or connection with the captured property, and which are in the possession, custody, or power of the captors.

9.

The said papers, documents and writings, shall be regularly marked and numbered by a commissioner, and the captor, chief officer, or some other person who was present at the taking of the prize, and saw that such documents, papers, and writings were found with the prize, must make a deposition before one of the said commissioners that they have delivered up the same to the judge or commissioner as they were found or received, without any fraud, subduction or embezzlement. If any documents, papers, or writings, relative to or connected with the captured property are missing or wanting, the deponent shall, in his said deposition, account for the same according to the best of his knowledge, information, and belief.

10.

The deponent must further swear, that if at any time thereafter, and before the final condemnation or acquittal of the said property, any further or other papers relating to the said captured property shall be found or discovered, to the knowledge of the deponent, they shall also be delivered up, or information thereof given to the commissioners, or to this court, which deposition shall be reduced to writing by the commissioner, and shall be transmitted to the clerk of the court, as hereinafter mentioned.

11.

When the said documents, papers, and writings are delivered to a commissioner, he shall retain the same till after the examination *in preparatorio* shall

have been made by him, as is hereafter provided, and then he shall transmit the same, with the same affidavit in relation thereto, the preparatory examinations, and the information he may have received in regard to the said captured property, under cover, and under his seal, to this court, addressed to the clerk thereof, and expressing on the said cover to what captured property the documents relate, or who claim to be the captors thereof, or from whom he received the information of the capture, which said cover shall not be opened without the order of the court.

12.

Within three days after the captured property shall have been brought within the jurisdiction of this court, the captor shall produce to one of the commissioners, three or four, if so many there be of the company or persons who were captured with, or who claim the said captured property, and in case the capture be a vessel, the master and mate or supercargo, if brought in, must always be two, in order that they may be examined by the commissioner *in preparatorio* upon the standing interrogatories.

13.

In the examination of witnesses *in preparatorio*, the commissioner shall use no other interrogatories but the standing interrogatories, unless special interrogatories are directed by the court. He shall write down the answer of every witness separately to each interrogatory, and not to several interrogatories together; and the parties may personally, or by their agents, attend the examination of witnesses before the commissioners; but they shall have no right to interfere with the examination by putting questions, or objecting to questions, nor to take notes of the proceedings before the commissioner, to be used otherwise than before the court. All objections to the regularity or legality of the proceedings of the commissioners must be made to the court.

14.

When a witness declares he cannot answer to any interrogatory, the commissioner shall admonish the witness, that by virtue of his oath taken to speak the truth, and nothing but the truth, he must answer to the best of his knowledge, or when he does not know absolutely, then to answer to the best of his belief concerning any one fact.

15.

The witnesses are to be examined separately, and not in presence of each other, and they may be kept from all communication with the parties, their agents or counsel, during the examination. The commissioners will see that every question is understood by the witnesses, and will take their exact, clear

and explicit answers thereto : and if any witness refuses to answer at all, or to answer fully, the examining commissioner is forthwith to certify the facts to the court.

16.

The captors must produce all their witnesses in succession, and cannot, after the commissioners have transmitted the examination of a part of the crew to the judge, be allowed to have others examined without the special order of the court : and the examination of every witness shall be begun, continued, and finished in the same day, and not at different times. Copies of the standing interrogatories shall not be returned by the commissioner with the examinations, but it shall be sufficient for the answer of the witnesses to refer to the standing interrogatories by corresponding numbers.

17.

Before any witness shall be examined on the standing interrogatories the commissioner shall administer to him an oath in the following form : " You shall true answer make to all such questions as shall be asked of you on these interrogatories, and therein you shall speak the whole truth and nothing but the truth, so help you God." If the witness is conscientiously averse to swearing, an affirmation to the same effect shall be administered to him.

18.

Whenever the ship's company, or any part thereof, of a captured vessel, are foreigners, or speak only a foreign language, the commissioner taking the examination may summon before him competent interpreters, and put to them an oath well and truly to interpret to the witness the oath administered to him, and the interrogations propounded, and well and truly to interpret to the commissioners the answers given by the witness to the respective interrogatories.

19.

The examination of each witness on the standing interrogatories shall be returned according to the following form :

" Deposition of A. B., a witness produced, sworn, and examined *in preparatorio*, on the day of in the year at the of on the standing interrogatories established by the District Court of the United States for the Southern District of New York. The said witness having been produced for the purpose of such examination by C. D., in behalf of the captors of a certain ship or vessel called the (or of certain goods, wares, and merchandise, as the case may be.)

" 1st. To the first interrogatory, the deponent answers that he was born at, &c.

“2d. To the second interrogatory the deponent answers that he was present at the time of the taking, &c.”

20.

When the interrogatories have all been answered by a witness, he shall sign his deposition, and the commissioner shall put a certificate thereto in the usual form, and subscribe his name to the same.

21.

No person having or claiming any interest in the captured property, or having any interest in any ship having letters of marque or commissions of war, shall act as a commissioner. Nor shall a commissioner act either as proctor, advocate, or counsel, either for captors or claimants in any prize cause whatever.

22.

If the captain or prize-master neglect or refuse to give up and deliver to the commissioners the documents, papers, and writings relating to the captured property, according to these rules; or refuse or neglect to produce, or cause to be produced, witnesses to be examined *in preparatorio*, within three days after the arrival of the captured property within the jurisdiction of this court, or shall otherwise unnecessarily delay the production of the said documents, papers, or writings, the commissioners, or one of them nearest to the place where the captured property may be, or before whom the examination *in preparatorio*, may have been already begun, shall give notice in writing to the delinquent to forthwith produce the said documents, papers, and writings, and to bring forward his witnesses, and if he shall neglect or delay so to do for the period of twenty-four hours thereafter, such commissioner shall certify the same to this court, that such proceedings may thereupon be had as justice may require.

23.

If within twenty-four hours after the arrival within this district, of any captured vessel, or of any property taken as prize, the captors or their agent shall not give notice to the judge or a commissioner, pursuant to the provisions herein made, or shall not, two days after such notice given, produce witnesses to be examined *in preparatorio*, then any person claiming the captured property and restoration thereof, may give notice to the judge or the commissioners as aforesaid, of the arrival of the said captured property, and thereupon such proceedings may be had by the commissioners in respect to the said property, and relative to the documents, papers, and writings connected with the said

capture, which the claimant may have in his possession, custody, or power, and relative to the examination of witnesses *in preparatorio*, as near as may be, as is before provided for in cases where the captors shall give notice and examine *in preparatorio*. And the said claimant may, in such cases, file his libel for restitution, and proceed thereon according to the rules and practice of this court.

24.

As soon as may be convenient after the captured property shall have been brought within the jurisdiction of this court, a libel may be filed, and a monition shall thereupon be issued, and such proceedings shall be had as are usual in conformity to the practice of this court in cases of vessels, goods, wares, and merchandise seized as forfeited in virtue of any revenue law of the United States.

25.

In all cases by consent of captor and claimant, or upon attestation exhibited upon the part of the claimant only, without consent of the captor, that the cargo or part thereof is perishing or perishable, the claimant specifying the quantity and quality of the cargo, may have the same delivered to him on giving bail to answer the value thereof if condemned, and further to abide the event of the suit, such bail to be approved of by the captor, or otherwise the persons who give security, swearing themselves to be severally and truly worth the sum for which they give security. If the parties cannot agree upon the value of the cargo, a decree or commission of appraisement may issue from the court to ascertain the value.

26.

In cases where there is no claim, an affidavit being exhibited on the part of the captor of such perishing or perishable cargo, specifying the quantity and quality thereof, the captor may have a decree or commission of appraisement and sale of such cargo, the proceeds thereof to be brought into court, to abide the further orders of the court.

27.

The name of each cause shall be entered by the clerk upon the docket for hearing in their order, according to the dates of the returns of the monitions, and lists of the causes ready for hearing are to be constantly hung up in the clerk's office for public inspection.

28.

In all cases where a decree or commission of appraisement and sale of any ship and cargo, or either of them, shall have issued, no question respecting the

adjudication of such ship and goods, or either of them, as to freight or expenses, shall be heard till the said decree or commission shall be returned, with the account of sales, and the proceeds according to such account of sales be paid into court, to abide the order of the court in respect thereto.

29.

After the examinations taken *in preparatorio* on the standing interrogatories are brought into the clerk's office, and the monition has issued, no further or other examinations upon the said interrogatories shall be taken, or affidavits received, without the special directions of the judge upon due notice given.

30.

None but the captors can, in the first instance, invoke papers from one captured vessel to another, nor can it be done without the special mandate of the judge; and in case of its allowance, only extracts from the papers are to be used.

31.

The invocation shall only be allowed on affidavit on the part of the captors, satisfying the court that such papers are material and necessary.

32.

Application for permission to invoke must be on service, at least two days previously, of notice thereof, and copy of the affidavit on the claimants or their agent (if known to be in this port), and after invocation allowed to the captors, the claimants, by permission of the judge, for sufficient cause shown, may use other extracts of the same papers in explanation of the parts invoked.

33.

But when the same claimants intervene for different vessels or for goods, wares, or merchandise, captured on board different vessels, and proofs are taken in the respective causes, and the causes are on the dockets for trial at the same time, the captors may, on the hearing in court, invoke of course in either of such causes the proofs taken in any other of them; the claimants, after such invocation, having liberty to avail themselves also of the proofs in the cause invoked.

34.

In all motions for commissions and decrees of appraisement and sale, the time shall be specified within which it is prayed that the commissions or decrees shall be made returnable.

35.

The commissioners shall make regular returns on the days in which their commissions or decrees are returnable, stating the progress that has been made in the execution of the commissions or decrees, and if necessary, praying an enlargement of the time for the completion of the business.

36.

The commissioners shall bring in the proceeds which have been collected at the time of their returns; and they may be required from time to time to make partial returns of such sums only as are necessary to cover expenses.

37.

On the returns of commissions or decrees, the commissioners or the marshal must bring in all the vouchers within their control.

38.

All moneys brought into court in prize causes, shall be forthwith paid into such bank in the city of New York, as shall be appointed for keeping the moneys of the court, and shall only be drawn out on the specific orders of the court in favor of the persons respectively having right thereto, or their agents or representatives duly authorized to receive the same.

39.

At every stated term of the court, the clerk shall exhibit to the court a statement of all the moneys paid into court in prize cases, designating the amount paid in each particular case and at what time.

40.

The statement, when approved by the court, shall be filed of record in the clerk's office, and be open to the inspection of all parties interested, and certified copies thereof shall be furnished by the clerk, on request, to any party in interest, his proctor or advocate.

41.

When property seized as prize of war is delivered upon bail, a stipulation according to the course of the admiralty is to be taken for double its value.

42.

Every claim interposed must be by the parties in interest, if within convenient distance; or in their absence, by their agent or the principal officer of the

captured ship, and must be accompanied by a test affidavit, stating briefly the facts respecting the claim and its verity, and how the deponent stands connected with or acquired knowledge of it. The same party who may intervene is also competent to attest to the affidavit.

43.

The captors of property brought in or held as prize, or which may have been carried into a foreign port, and there delivered upon bail by the captors, shall forthwith libel the same in fact, and sue out the proper process. The first process may, at the election of the party, be a warrant for the arrest of the property or person to compel a stipulation to abide the decree of the court, or a monition.

44.

The monitions shall be made returnable in ten days, and if the property seized as prize is in port, shall be served in the same way as in the case of monitions issued on the instance side of the Court of Admiralty, on seizures for forfeiture under the revenue laws. In case the property claimed as prize is not in port, then the monition is to be served on the parties in interest, their agent or proctor if known to reside in the district, otherwise by publication daily in one of the newspapers of this city for ten successive days preceding the return thereof.

45.

Whenever the jurisdiction of the court is invoked upon matters as incident to prize, except as to the distribution of prize money, there must be distinct articles or allegations in that behalf in the original libel or claim on the part of the party seeking relief. But in case the matters have arisen, or become known to the party subsequent to presenting his libel or claim, the court will allow him to file the necessary amendments.

46.

No permission will be granted to either party to introduce further proofs until after the hearing of the cause upon the proofs originally taken.

47.

In case of captures by the public armed vessels of the United States, and a proceeding for condemnation against the property seized as prize *jure belli*, or in the nature of prize of war, under any act of Congress, the name of the officer under whose authority the capture was made must be inserted in the libel.

48.

A degree of contumacy may be had against any party not obeying the orders or process of the court, duly served upon him; and thereupon an attachment may be sued out against him. But no constructive service of a decree or process, *viis et modis*, or *publica citatio* will be sufficient, unless there has been a publication thereof in a daily paper in this city, at least ten days immediately preceding the motion for an attachment.

49.

When damages are awarded by the court, the party entitled thereto may move for the appointment of three commissioners to assess the same; two persons approved by the court will thereupon be associated with a standing commissioner of the Circuit Court, the clerk or deputy clerk of this court, if not interested in the matter, whose duty it shall be to estimate and compute the damages, in conformity to the principles of the decree, and return a specific report to the court of the amount of damages, and the particular items of which they are composed.

50.

Any party aggrieved may have such assessment of damages reviewed in a summary manner by the court before final decree rendered thereon, on giving two days' previous notice to the proctor of the party in whose favor the assessment is made of the exceptions he intends taking, and causing to be brought before the court the evidence given the commissioners in relation to the particular excepted to.

51.

Every appeal from the decrees of this court must be made within ten days from the time the decree appealed from is entered, otherwise the party entitled to the decree may proceed to have it executed. No appeal shall stay the execution of a decree unless the party, at the time of entering the appeal, gives a stipulation with two sureties to be approved by the clerk in the sum of two hundred and fifty dollars, to pay all costs and damages that may be awarded against him, and to prosecute the appeal to effect.

52.

If the party appealing is afterwards guilty of unreasonable delay in having the necessary transcripts and proceedings prepared for removing the cause, it will be competent to the other party to move the court for leave to execute the decree notwithstanding the appeal.

53.

In all cases of process *in rem* the property after arrest is deemed in the custody of the court, and the marshal cannot surrender it on bail, or otherwise, without the special order of the court.

RULES
OF THE
CIRCUIT COURT
NORTHERN DISTRICT OF NEW YORK.

Rules of the Circuit Court of the United States for the Northern District of New York, regulating appeals from the District Court.—June Term, 1848.

1.

The transcript to be sent to this court, on appeal thereto from a sentence or decree of the District Court, may be certified by the clerk of the latter court, under his hand and the seal of the court.

2.

Eight days' notice of hearing on appeal shall in all cases be given, by the service thereof on the adverse party, or on his proctor.

3.

When an appeal from a decree of the District Court is interposed twenty days before the next stated session of this court, it may be noticed for hearing at such session by either party.

4.

When an appeal from a decree of the District Court is interposed less than twenty days before the next stated session of this court, the appellee may, at his option, notice the cause for hearing at such session, on the first or other day thereof; or have the cause continued until the next stated session.

5.

Transcripts of the depositions taken in any cause, in the District Court, according to law—whether *de bene esse* under the acts of Congress, or on commission—and read at the hearing of the cause in that court, may be transmitted to this court on appeal, and read by either party as evidence at the hearing of the cause in this court.

6.

A copy of the notes taken by the judge, or under his direction by the Clerk of the District Court, of the evidence of witnesses examined orally therein, shall be certified and transmitted to this court on appeal, along with the transcript of the record and other proceedings in the cause, and shall be admitted to prove the evidence given by such witnesses; but nothing herein contained shall be construed to abridge the right of the parties to re-examine such witnesses in this court, if they shall see fit to do so.

7.

OCTOBER, 22, 1850.

Whereas, Samuel Blatchford, Esq., Counsellor at Law, has been appointed reporter of the decisions of the Circuit Judge, in the Circuit Courts of the United States, held in the Second Circuit thereof:

Ordered, That the solicitors, attorneys, and proctors of said courts, in cases of motions for new trials, demurrers, writs of error, appeals in admiralty, and cases in equity, bringing on the argument, furnish the said reporter with a copy of the case, demurrer book, error book, apostles, including all proofs in the court below, and in this court, in the case, and of the pleadings and proofs in equity, as the case may be, at or before the commencement of the argument.*

8.

AUGUST, 15, 1855.

Ordered, That the clerk of this court be, and he is hereby vested with general power to name commissioners, in commissions to be issued to take testimony, in like manner that the court or a judge thereof can now do by the sixty-seventh equity rule prescribed by the Supreme Court of the United States.

9.

JUNE TERM, 1864.

When a fine or penalty is paid into court, and the whole thereof shall belong to the United States, or one half thereof shall belong to the Government, and the other half thereof to any other party, the clerk shall, as soon thereafter as practicable, unless a stated term of the court shall then be in session, and then as soon as practicable after the end of such term, pay to the proper

* Under this rule, and the rules regulating appeals in admiralty cases, Mr. Justice Nelson has decided, that the proctors in the Circuit Court in admiralty appeals must each procure from the Clerk of the Circuit Court, a certified copy of the apostles, which includes all the papers returned from the District Court, and that the appellant must also procure a certified copy for the court. This insures the correspondence of the folios in the copies of the counsel with those in the copy of the court, which is indispensable. The appellant may himself furnish the copy for the reporter. (1 Blatchf. C. C. R. 660, note.)

depository the amount thereof belonging to the United States, and any person claiming any portion of such fine or penalty, as the discoverers or informers or prosecutors of the offender incurring such fine or penalty, shall, on or before the first day of the next stated term of the court, file with the clerk of the court his affidavit, and such other papers as he may think proper, showing his right to a moiety of such fine or penalty; which affidavit and papers shall be presented to the court by the clerk on the second day of such term.

10.

In cases under the Act, "to provide Internal Revenue," &c., the persons so claiming shall file, with such affidavit and papers, the written consent of the Collector of Internal Revenue for the district in which such fine or penalty was incurred, that a moiety shall be paid to such claimant, or shall show by affidavit that a copy of such affidavit and papers had been served on such collector at least eight days before the commencement of such term.

11.

OCTOBER TERM, 1864.

The cases and points, and all other papers furnished to the court in calendar causes, other than causes for trial before a jury, except the papers sent up from the District Court on appeals in admiralty cases, shall be printed on white writing paper, with a margin on the outer edge of the leaf not less than two inches wide. The printed page, exclusive of any marginal note or reference, shall be seven inches long, and three and a half inches wide. The folios, numbering from the commencement to the end of the papers, shall be printed on the outer margin of the printed page. But the court, or either judge thereof, may, before the papers are printed, and at least ten days before the time for which the cause is noticed, or is to be noticed, for hearing, by written order, dispense with the printing of papers as aforesaid, a copy of which order shall be served on the attorneys of the parties to the suit interested in such hearing, at least ten days before the day appointed for such hearing.

12.

No cause shall be noticed for trial before the jury, or for hearing, upon pleadings and proofs, or upon a case or bill of exceptions, at the adjourned term in January, in the city of Albany, without leave of the court therefor, granted at the previous stated term. But all causes may be noticed for trial or hearing, at the adjourned circuit, to be held on the third Tuesday in March, in the city of Utica, the same as at the stated term.

13.

MARCH TERM, 1868.

In order to assimilate the practice of this court to the practice of the State Court, in respect to the noticing of causes for trial, and to allow either party to give notice of, and bring on the trial of a cause: It is hereby ordered, that there be added to the general rule of this court, adopted in October Term, 1841 (which provides, that, "In cases not provided for by the rules of this court, the rules of the District Court for the Northern District of New York, so far as the same are in their nature applicable, are to be considered as rules of this court"), the following, viz: And a party defendant or claimant, as well as the opposite party, may notice any issue of fact for trial, and bring on the trial thereof in pursuance of such notice.

RULES
OF THE
DISTRICT COURT,
NORTHERN DISTRICT OF NEW YORK.

Rules of Practice of the District Court of the United States for the Northern District of New York, in cases of Admiralty and Maritime Jurisdiction on the instance side of the Court, as amended and established at the May Term, 1856.

1.

The "Rules of Practice of the Courts of the United States, in causes of Admiralty and Maritime Jurisdiction, on the instance side of the court," prescribed by the Supreme Court of the United States, at the January Term, 1845, and the rules of said court in addition to or in modification of the same, are rules of practice in this court in all cases of admiralty and maritime jurisdiction, including cases within the act entitled "An Act extending the jurisdiction of the District Courts to certain cases upon the lakes and navigable waters connecting the same, passed February 26th, 1845.

2.

A special session of the court is hereby appointed to be held at Buffalo, on Tuesday of every week, at ten o'clock in the forenoon; at which special session all process may be made returnable, and all proceedings may be had, except trials by jury, which will not be held without a special order by the judge for that purpose, except at a stated term; and except trials of issue of fact before the court, which will be had only on the first Tuesday of each month, other than the months of July and August, without a like special order. Issues of fact may be brought to trial by either party after twenty days' notice to the other parties in interest or in pursuance of an order previously obtained for such purpose; and issues of law, and enumerated and non-enumerated motions may be brought to a hearing after eight days' notice as aforesaid, or in pursuance of a like order; but no notice shall be required in respect to any proceeding or motion which can be properly made or taken on the return day of process, if such motion shall be made or proceeding taken on such return

day, or when the court shall not sit on such return-day, on the first court day thereafter. In case of the non-attendance of the judge at the time hereby appointed, or at any other time which may by special order be appointed, for any special session of the court, all process and proceedings shall be continued as of course, and without prejudice, to the next special sessions, or by special order, to some earlier day for that purpose appointed by the judge.

3.

All process shall bear test of the day on which it is sealed, and shall be made returnable before the judge at Buffalo, on any Tuesday thereafter, sufficiently remote to admit of the prescribed notice. But final process upon bonds or stipulations may be made returnable at a stated term of the court, or at a special session as hereinbefore provided.

4.

The newspaper called the *Buffalo Commercial Advertiser*, printed at the city of Buffalo, is hereby designated, in pursuance of Rule 9 of the Rules of Practice in admiralty and maritime causes prescribed by the Supreme Court, as the newspaper in which all notices shall be printed, which are by the said rule required to be published in a newspaper, in all suits *in rem*, in which the arrest of the vessel, goods, or other thing proceeded against, has been made at or within the collection district of Buffalo Creek, or the collection district of Niagara.

5.

The Buffalo Savings Bank, in the city of Buffalo, is hereby designated, in pursuance of Rule 42 of the same rules, as the place of deposit for moneys paid into court.

6.

Libels, answers, and all other pleadings and papers to be filed, shall be so plainly written as to be readily legible, and shall be free, to all reasonable extent, from interlineations and erasures; and it shall be the duty of the clerk to reject all papers delivered to him to be filed, which are not in conformity with this rule.

7.

All libels praying process of arrest, whether *in rem* or *in personam*, shall be verified by the oath or solemn affirmation of the libellant, unless, for sufficient cause shown, such oath or affirmation shall be dispensed with by the special order of the judge. And all libels, answers, and other pleadings shall be signed by the party in his own proper handwriting, and in like manner by the proctor for the party in whose behalf they are filed, unless, for

special cause shown, such signature shall be dispensed with by leave of the court.

8.

In suits *in rem*, the mesne process shall be served, and the required notices given, at least fourteen days before the return day of the process, unless a shorter time shall be prescribed by special order, founded upon the exigencies of the particular case.

9.

All process, and all notices for publication in a newspaper in pursuance of Rule 9 of the Rules of Practice in admiralty and maritime causes, prescribed by the Supreme Court, shall be drawn up by the clerk; and no process, except subpoenas, shall be issued by him in blank.

10.

The notice mentioned in the last preceding rule shall contain the title of the suit, a summary statement of the cause of action, the amount of the demand, and the day and place fixed for the return of the process; and shall have affixed at the close thereof the name of the proctor of the libellant, and that of the marshal, or of his deputy intrusted with the execution of the process.

11.

The amount of the debt or damages for which the action is brought, shall be stated in the libel, and, with the addition thereto, for costs, of \$250 in a suit *in rem*, and of \$100 in a suit *in personam*, shall be endorsed on the mesne process, thus: "Action for \$;" and in a suit *in rem* the requisite bond or stipulation, upon the release of the property, shall be in the sum of \$250, in addition to twice the amount demanded in the libel; and in a suit *in personam* in the sum of \$100, with the addition of twice the amount of the demand.

12.

When the libellant is not a resident of the district, he shall, at the time of commencing his suit, give a bond or stipulation, with one or more sufficient sureties, in the sum of at least one hundred dollars, if the suit is *in personam*; and in the sum of at least two hundred and fifty dollars, if the suit be *in rem* — conditioned that he will appear from time to time, and abide by all orders, interlocutory and final, of the court, and pay the costs and expenses, if any, which shall be awarded against him by the final decree of this court, or of any appellate court: *Provided*, however, that this regulation shall not extend to suits for seamen's wages, nor to suits for salvage, when the salvors have come into port in possession of the property libelled.

13.

In all cases not embraced within the last preceding rule, on motion of the defendant or claimant, the court will, in its discretion, direct the libellant, on pain of dismissing his libel, to give the like security.

14.

Instead of the security specified in the two last preceding rules, the party from whom it is required may, at his option, deposit in court a sum of money of the like amount.

15.

If in any case a libel shall be filed in behalf of a libellant who is not a resident within the district, before security for costs and expenses shall be filed as required by Rule 12, the proctor for such libellant shall be liable for costs and expenses to the amount specified in the said rule, until such security shall be filed; and the payment thereof may be enforced by summary process *in personam* against such proctor.

16.

When a proctor is retained to defend in any suit, before the return day of the mesne process therein, who resides or has his place of business more than three miles from the clerk's office, and not more than three miles from the residence or place of business of the proctor for the libellant, such proctor for the defendant may, at any time before the return day of the process, serve a notice of his retainer on the proctor for the libellant; and it shall thereupon be the duty of the proctor for the libellant, without delay, to serve on the proctor for the defendant a copy of the libel on file.

17.

When the defendant's answer, or any other pleading subsequent to the libel, is put in by being simply filed in the clerk's office, instead of being given in open court, in presence of the proctor or advocate for the adverse party, a copy thereof, with notice of the time of filing the same, shall without delay be served on the proctor of such adverse party.

18.

When a decree is made in the absence of the proctor of either party to the suit, unless such proctor resides at the place where the clerk's office is kept, it shall be the duty of the clerk immediately to transmit to him by mail a copy of the decree; and such proctor and party shall be responsible to the clerk for the fees to which he may be entitled for such service, according to the usual rate of charge.

19.

In all suits, other than those founded upon municipal seizure, not less than six days' notice of the sale of property on final process shall be given. A longer notice may be given at the discretion of the marshal or his deputy by whom the sale is to be made, or by order of the court. It shall be the duty of the marshal in all cases in which it shall be practicable, to make the sale and pay the proceeds into court on or before the return day of the process, under which such sale is to be made. The clerk will in all cases make the process returnable at such time as may be necessary to enable the marshal to give the requisite notice, make the sale, and return such process on or before the return day thereof.

20.

Whenever any libel shall be taken as confessed, for want of answer, there shall be an order of reference to the clerk or a commissioner *pro hac vice* to take proof of the material facts and circumstances stated in the libel, and to examine the libellant on oath or affirmation, in respect to payments or offsets, and in the discretion of the referee in respect to any other matters pertaining to his demand, and the referee shall report accordingly.

Upon sufficient cause shown, the court will in the order of reference, or otherwise, direct that the oath or affirmation of the libellant may be received in support of the allegations of the libel, or will give such other special directions in respect to the proceedings upon the reference as the nature of the case may require.

21.

In cases of reference under a decree *pro confesso*, the libellant shall, unless otherwise specially directed, proceed with the reference within four days from the date thereof; and upon a reference in cases in which an answer shall have been interposed, or in which, for other reasons, notice of hearing on the reference shall be required, the hearing may proceed on any day appointed by the referee, at the instance of either party; provided, that eight days' notice shall have been given of such hearing, to all adverse parties who have appeared in the cause.

Such reference may be continued from day to day, or by adjournment, and when adverse parties appear, the proofs shall be closed at the end of thirty days from the date of the order of reference, unless the parties shall agree to the closing of the same at an earlier day, or unless the time shall be extended by the written order of the referee, or by the written stipulation of the parties, or by the order of the court for that purpose obtained; and the clerk or commissioner shall make and file his report within eight days after the testimony shall have been closed.

22.

Exceptions to any report made by the clerk or a commissioner, must be filed or served on the adverse party within ten days after such report shall have been filed, unless the time shall be enlarged by the judge or by the written stipulation of the parties; and if exceptions are not so filed and served, the party in whose favor the report may be, may, on the first special session thereafter, and without notice, move for the confirmation of the report, and a final decree thereupon.

23.

When interrogatories are propounded by the defendant at the close of his answer, touching any matters charged in the libel, or touching any matter of defence set up in the answer (according to Rule 32, of the Rules of Practice prescribed by the Supreme Court), the libellant shall answer the same within twelve days, unless, for sufficient cause shown, he shall, by special order, be allowed a longer period; and the court may, in its discretion, require such interrogatories to be answered within a shorter time, or *instantly*.

24.

When interrogatories are propounded to a garnishee (in pursuance of Rule 37, of the Rules of Practice prescribed by the Supreme Court), a copy thereof shall be served upon the garnishee personally, or, in case of his absence from his dwelling-house or usual place of abode, by leaving such copy with some person of suitable age who is a member or resident of the family; and the garnishee shall be required to answer the interrogatories within twelve days after such service, unless a longer period shall, for adequate cause shown, be by special order allowed for that purpose; and the court may also, in its discretion, prescribe a shorter period.

25.

Exceptions to the libel (taken in pursuance of Rule 36, of the Rules of Practice prescribed by the Supreme Court), for surplusage, irrelevancy, impertinence, or scandal, may be taken *ore tenus* on the return day of the mesne process; and exceptions to the answer or other allegations given by the defendant, taken for the like causes, in pursuance of the same rule, or in pursuance of Rule 27, for want of sufficiency, fulness, or distinctness, may be taken in like manner, when the answer or other allegation is put in in open court; and the court will thereupon, in its discretion, either decide upon the sufficiency of the exceptions so taken, *instantly*, or direct the same to be drawn up in writing, and appoint a day to hear argument thereon, or refer the same to a commissioner.

26.

When, at the return of the mesne process, further time has been granted to answer the libel and the answer, instead of being produced and offered in open court, in the presence and hearing of the advocate of the libellant, is simply filed with the clerk, a copy thereof shall, without delay, be served on the proctor for the libellant, personally, if he resides within three miles of the proctor for the defendant, otherwise either personally or by mail; and the proctor for the libellant may, within ten days after the service thereof, file and serve exceptions thereto. The defendant, within eight days after the service of such exceptions, may give a written notice of his submission to any or all of them; and if any of them are not submitted to within the time prescribed, the libellant may bring the same to a hearing before the court, by giving, at any time within six days, a notice of not less than six, nor more than ten days, of such hearing. Every exception not submitted to, and which is not notified for hearing within the time specified, shall be considered as abandoned.

27.

When exceptions are referred to a commissioner, if the party who obtained the reference shall not procure and file the commissioner's report within fourteen days from the date of the order of reference, unless further time shall be allowed, for sufficient cause shown, by special order, the exceptions shall be considered as abandoned. The party by whom the reference was obtained shall have eight days after filing the report of the commissioner, to except thereto. On filing the report, he shall give notice of filing the same to the adverse proctor, who shall have eight days after such notice to except to the report. Exceptions to a commissioner's report may be noticed for argument by either party, and the notice shall be served at least six days before the day designated for the hearing.*

28.

All appeals to the Circuit Court must be interposed within ten days from the date of the decree, or within such other period as shall be designated by special order made in the particular suit; and in cases where the right of appeal is allowed, no final process shall issue, before the expiration of the ten days, or other period prescribed.

29.

The regulations prescribed by law relative to the mode of serving notices and other papers, in suits prosecuted in the courts of the State of New York, are hereby adopted, *mutatis mutandis*, as rules of this court.

* See Rules 28, 36, in Admiralty, prescribed by the Supreme Court.

30.

The provisions in the foregoing rules contained, shall be held applicable, as far as may be, to all proceedings by petition or otherwise, which may be instituted to enforce any lien or demand, upon or against any property in the custody of the court, or any proceeds in the registry.

31.

It is ordered, That where several suits are instituted against one and the same vessel, or the proceeds thereof, no more than one charge for mileage shall be allowed for the service and return of mesne process in such suits, unless for special cause shown it shall be otherwise specially ordered by the court.

32.

It is hereby ordered, That the rule heretofore made and entered, requiring the office of the clerk of this court to be kept at the city of Auburn, be, and the same is hereby abrogated, and it is ordered that the said office be henceforth kept at the city of Buffalo.

ADDITIONAL RULES,

Adopted in 1860, and subsequently, in some respects, modified.

1.

In order to prevent the commencement of suits upon small demands, and the consequent accumulation of costs altogether disproportionate to the sum demanded, the clerk will issue no process for seamen's wages, when the sum sworn to be due to a sole libellant is less than ten dollars, or to several joint libellants is less than fifteen dollars, or for any other demand, when the amount sworn to be due is less than twenty dollars, except when specially ordered by the court or the judge thereof, or such judge shall be absent from his place of residence. When the amount recovered shall be less than the sums above named, no costs will, in ordinary cases, be decreed to the libellant unless it shall be shown upon the hearing that such libellants could not have had a complete and perfect remedy in a court of a justice of the peace.

2.

In suits for seamen's wages, the clerk shall insert in the warrant of arrest and monition, after the words "in a cause of subtraction of wages, civil and maritime," the words "and also to answer unto all other persons having demands against the said vessel, for wages earned on board thereof, who may

choose to make themselves parties to the libel of the said (naming the libellant or libellants), by way of amendment or supplement, without further process or citation." And all mariners having claims against such vessels may, thereupon, so long as the vessel remains in custody, or any proceeds thereof remain in the registry, make themselves parties to such libel or suit, by a petition and proper allegations, by way of amendment or supplement to such original libel, and may have a decree for the payment of their demands, as though they were named as parties to the original libel, and no new warrant of arrest or monition shall be issued in favor of any seaman, who, in respect to the demand on which he seeks such process, is entitled to make himself a party to proceedings already commenced; and no costs shall be allowed to any such seaman who shall, without sufficient excuse, fail to apply to make himself a party to such a suit on the return day of such process, or the first court day thereafter. And in order to allow such seaman to make such application, no final order of reference in any case for seamen's wages shall be made until the next court day after the return day of the process issued thereon.

3.

No warrant of arrest shall issue on behalf of a seaman for wages on board a British or Canadian vessel, where it shall appear that such seaman shipped and was discharged in Canada or elsewhere out of the United States; or in favor of any subject of Great Britain against any British vessel until the written consent thereto of the British Consul, or an order of the judge therefor, shall have been filed.

4.

All decrees for seamen's wages shall direct the amount decreed for such wages to be paid to the libellant in person; and all checks or orders for the payment of such wages shall be drawn, payable to the order of the seaman to whom such wages shall have been decreed.

5.

No allowance for the expenses of keeping any ship, or vessel, or other property, beyond the sum of fifty cents per day, or fifteen dollars in the aggregate, shall be allowed to the marshal, except upon the affidavit of the ship-keeper or other custodian, stating his employment and service, and the amount he has been actually paid therefor, and that such payment was received for such service only, and was received wholly for his own benefit, and not for the benefit of any officer of the court; and also, that there is no understanding or intention that the whole, or any part thereof shall be paid, or in any way disposed of or allowed to the marshal or his deputy, or for his or their benefit; and a copy of such affidavit shall be served with the copy of bill of fees or statement of allowance claimed.

6.

In collision causes, unless the libel and answer shall respectively state or admit, either positively or upon information and belief, and as fully and accurately as practicable :

1. The names of the vessels which came into collision. and of their respective masters ;
2. The time of the collision, and whether in the night or day time ;
3. The name of the officer or person in charge of the deck of the vessel of the party ;
4. The place of the collision ;
5. The general course or direction of the vessel of the party, and her direction at the time of the collision ;
6. The state of the weather, and, if in the night, the character of the night in respect to darkness, rain, &c. ;
7. The course and speed of the party's vessel, when the other was first seen ;
8. The lights, if any, carried by her, and their position ;
9. The bearing and apparent distance of the other vessel when the vessel itself was first seen ;
10. The lights, if any, of the other vessel which were first seen, and their bearing, and their estimated apparent distance at that time ;
11. Whether any lights of the other vessel other than those first seen came into view before the collision, and the particulars thereof ;
12. The names of the person or persons, if any, stationed and acting as lookout on the vessel of the party at the time the other vessel or her light was first seen ;
13. What measures were taken, and when, to avoid the collision, and particularly, whether any and what change of helm or sails was made for that purpose ;
14. The parts of each vessel which first came into contact, and the manner in which they struck ;
15. The character and extent of the injury, if any, to the party's vessel.

The opposite party, on showing to the satisfaction of the court, by affidavit or otherwise, that a more full and specific statement of the circumstances of the collision mentioned in such libel or answer, in respect to some one or more of the particulars above mentioned, is necessary to the proper preparation of an answer to such libel, or the proper preparation, on his part, for the final hearing of such cause, or will materially reduce the expenses of procuring testimony for such hearing, may, on motion (due notice of such motion, with copies of affidavits and papers, other than the files of the court, on which such motion is to be made, having been first served on the opposite proctor at least four days before the day for which such motion is noticed), obtain a special order of the court for the amendment of such libel or answer, in regard to

such particulars, within such time, and upon such conditions, and with such consequences, in case of a non-compliance with such order, as the court shall prescribe. And an order staying proceedings on any defective libel, or striking out any defective answer, may be made, on a further notice of motion for that purpose, in case any amendment ordered by the court is not made and filed as required by such order, unless some satisfactory cause for the non-compliance with such order shall be shown

MARCH 20, 1869.

It is hereby ordered that in all cases in which the marshal is required to publish any notice of any process or proceeding, or any other notice, in any case pending on the common law or admiralty side of this court (other than in cases provided for by law, or in the Bankruptcy Rules), the marshal or his deputy shall cause the same to be published as follows, viz.: In all cases in admiralty, except seizure cases, the notice of, or under, or under the first process served or executed therein, shall be published in the county where such property was arrested, under such process, and in the newspaper first named in the 38th General Rule in Bankruptcy, heretofore adopted by this court, as one of the newspapers in which notices in bankruptcy cases are, under said rule, to be published in said county; and in seizure cases, in admiralty, such notice shall be so published in the county where such seizure is alleged, in the information upon which such process was issued, to have been made, and in the newspaper therein first named in said Bankruptcy Rule, as aforesaid; and all subsequent notices required to be published by the marshal in either of such cases shall be published in the same paper. In all other than admiralty and bankruptcy cases, and in cases otherwise provided for by law, such notices of, or under the first process or proceeding therein, and all subsequent notices in the same cause, shall be published in the county in which the property was arrested, or seized, as above first provided for in admiralty cases, except that such notices shall be published in the newspaper in such county secondly named in said 38th Bankruptcy Rule, instead of the one firstly therein named. And in all cases where the first process is an execution, or other process, or order for the sale of real or personal property, or both, notices of sale, under the same, shall be published in the newspaper secondly named in said Bankruptcy Rules for publication of notices in the county in which such property may be seized under such execution, process, or order.

In case any other newspaper has been, or shall hereafter be, substituted for one of the newspapers named in said Bankruptcy Rule, the publications in this rule referred to or provided for, shall, in such case, be made in such substituted newspaper, instead of the newspaper now mentioned in such Bankruptcy Rule.

But notwithstanding the provisions hereinbefore contained, the judge of this court may, in any case by writing under his hand, direct any additional or different publication of any such notice; and whenever any such direction

shall be given, such notice shall be published according to such direction. And in all cases not provided for by this order, or the General Rules of this court, or by law, all such notices shall be published in such newspaper, and in such manner as said judge shall by writing direct; and in all cases in which such provision has not been made, the marshal, before publishing such notices, shall apply for and obtain such direction.

All notices, unless otherwise provided by law, by the rules of court, or the special order of the court, or the judge thereof, shall be published three times, and the first of such publications shall be made at as early a day as may be required by law, or the rules and practice of the court. And it is further ordered that the clerk certify a copy of the above, and of this order, and deliver the same to the marshal of this district, and that in all seizure cases, the clerk shall endorse on the first process issued therein, the name of the paper in which the notices in such case are required to be published under the above order.

RULES
OF THE
CIRCUIT COURT,
EASTERN DISTRICT OF NEW YORK.

[Upon the organization of the court, March 22, 1865, the rules on Appeals in Admiralty, of the Circuit Court, for the Southern District of New York, were adopted as rules of this court. No changes have since been made.]

RULES
OF THE
DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

*Admiralty Rules of the District Court of the United States for the Eastern District of New York, applicable in all instance causes, civil and maritime.—
Adopted 1870.*

The following rules are adopted as the Rules of the District Court of the United States, for the Eastern District of New York, by virtue of the forty-sixth Admiralty Rule promulgated by the Supreme Court of the United States; and are to be deemed subject to be modified by special order, in any case, when it shall be made to appear that the due administration of justice requires a modification to be made.

1.

Libels and answers (except on behalf of the United States), shall be verified by the oath or affirmation of the party, or of some person having knowledge of the facts stated in such pleading.

2.

Libels, and other papers to be filed, shall be plainly and fairly engrossed, without erasures or interlineations materially defacing them. If papers not conforming to this rule are offered, the clerk shall require the *allocatur* of the judge to be endorsed thereon, before he receives them on the files.

3.

In suits for seamen's wages, any mariner in the same voyage, not made a party, may, by short petition to the court, in any stage of the cause previous to the final distribution of the fund in court, or discharge of the defendant and his sureties, be joined as libellant in the cause. In cases of salvage and other causes, civil and maritime, persons entitled to participate in the recovery, but not made parties in the original libel, may, upon petition, be admitted to prosecute as co-libellants, on such terms as the court may deem reasonable.

4.

Wednesday of each week shall be a general return day, and is appointed as a special sessions of the court (except the stated term be then in session), at which the same proceedings may be taken in causes of admiralty and maritime jurisdiction as at a stated term.

All process shall be made returnable at a general return day, unless on cause shown it is otherwise ordered.

5.

In all possessory actions, the process shall be made returnable at the first general return day after the filing of the libel, unless otherwise ordered by the judge. In such actions, the answer will be required to be filed, upon return of the process duly served, and a day for hearing will then be fixed, unless otherwise ordered for cause shown. No property seized or detained in such actions, will be discharged from custody upon stipulations or otherwise, except upon the order of the court, after notice to the adverse party of application for such order. Notice by publication will not be required in possessory actions, unless specially ordered.

6.

Process, orders to show cause, and notices of motion shall upon the return day thereof be called by the clerk; and thereupon, when there is no opposition, the orders prayed for, in accordance with the practice of the court, may be entered by the clerk, whether the judge be actually present or not; and in like manner orders, which according to the practice of the court are granted as of course, may be entered, reserving to any party affected thereby, the right to apply to the judge at the earliest opportunity to vacate or modify the same. In the event of opposition, the papers may in the absence of the judge be left with the clerk, to be by him submitted to the judge for decision thereon, or the clerk may adjourn the matter until the judge shall be in attendance.

7.

No process *in personam*, for the arrest of any person, in cases of torts or unliquidated damages, shall issue, except upon the mandate of the judge.

8.

In cases of liquidated damages, when the demand does not exceed the sum of five hundred dollars, and the certainty and amount of the demand appear upon the face of the libel, an attachment *in personam*, or warrant of arrest, may be issued by the clerk without an order. The attachment shall plainly express the cause of action and the amount of the demand, and the clerk shall

endorse thereon the sum for which bail is required, not exceeding one hundred dollars above the sum sworn to be due and unpaid, and not exceeding in all the sum of five hundred dollars. No attachment or citation shall be issued until the libellant shall have filed a stipulation for costs, in the sum of one hundred dollars, except in suits by the United States.

9.

No warrant with an attachment clause therein against credits or effects, in the hands of third parties, will be issued, unless the libel set forth the names of the garnishees intended to be served; and when such warrant shall be issued, it shall contain a citation to such garnishees, to be named therein, to appear at the time and place designated for the appearance and answer of the respondent in the warrant, to answer on oath as to the debts, credits, and effects of the respondent in their hands, and to such interrogatories touching the same as may be propounded by the libellant.

In case a garnishee, after due citation, fails to appear and answer at the time and place named in the citation, an order may be entered, declaring him to be in contumacy, and directing that he show cause why an attachment for contempt should not issue against him.

When property, debts, credits, or effects of the respondent shall be found to have been attached, and the respondent has failed to appear and answer the libel, the court will proceed *ex parte*, and will pronounce the proper decree to secure the application of the attached property, debts, credits, or effects, to the payment of the sum adjudged to be due.

10.

Whenever in an action *in personam*, any debts, credits, or effects shall be attached in the hands of any third party, the court may, upon due application, require the party charged with the possession thereof, to appear and show cause why the same should not be brought into court, to answer the exigency of the suit; and if no sufficient cause be shown, the court may order the same to be forthwith brought into court, to answer the exigency of the suit; and upon failure of the party to comply with the order, may award an attachment or other compulsive process to compel obedience thereto.

11.

On the return of the attachment of debts, credits, or effects of a respondent, and the citation of the garnishees, the garnishees shall file an affidavit containing a full and true statement of all property, debts, credits, or effects in their hands, or subject to their control, belonging to the principal party at the time the attachment was served, and at the time the answer is made; and declare whether they have any, and, if any, what claim to any and what part

thereof; and shall then, on motion of the actor, pay into court such amount as they shall not claim, or as may be ordered by the court; or they may be required to give stipulation, with sufficient surety, to abide the further order or decree of the court in relation thereto. If it do not appear by the answer of the garnishees, that property, credits, or effects of the defendant, sufficient to answer the exigencies of the suit, have been attached, the actor may move for an order that the garnishees attend before the court, or a commissioner, and answer all proper interrogatories touching such property, credits, or effects. On the default of any garnishee, in this behalf, an order may be entered, directing that an attachment issue against him, unless he shall show cause in four days, or on the first day the court is in session afterwards.

12.

When the property, effects, or credits named in the process are not delivered up to the marshal by the garnishee or trustee, or are denied by him to be the property of the party, it shall be a sufficient service of such attachment to leave a copy thereof with such trustee, or at his residence or usual place of business, unless the libellant shall, by competent surety, indemnify the marshal for arresting the property pointed out to him.

13.

All process to the marshal shall be returned on the return day thereof, and, if he shall not return the same in four days after being required in writing so to do, by any party or his proctor, upon affidavit of such requirement and of the delivery of the process to him, an order may be entered, of course, that he show cause why an attachment shall not issue against him; and, in the case of process *in rem*, the return of the marshal shall express the day of the seizure of the property or the day of sale, if the process is for that object.

14.

No decree shall be entered by default, or consent of parties in court, ordering the condemnation and sale of property arrested on process *in rem*, or for the distribution of the proceeds thereof in court, unless publication, according to the course of the court, shall have been duly made before the return day of the monition issued with the attachment in the case.

15.

In case of the attachment of property, or the arrest of the person, in causes of civil and admiralty jurisdiction (except in suits for seamen's wages, when the attachment is issued upon certificate, pursuant to the Act of Congress of July 20, 1790), the party arrested, or any person having a right to intervene in respect to the thing attached, may, upon evidence showing any improper prac-

tices, or a manifest want of equity on the part of the libellant, have a mandate from the judge, for the libellant to show cause *instantly* why the arrest or attachment should not be vacated.

16.

Stipulations may be taken, in admiralty and maritime causes, out of court, before the clerk or a commissioner duly authorized to take the same. The officer taking the stipulation shall, if required by the opposite party, examine the sureties on oath, and decide as to their competency. An appeal may be taken *instantly* to the judge, in case the decision is against the sufficiency of the sureties.

17.

Property under arrest may be discharged on stipulation, upon one day's notice of the application to the proctor of the libellant, specifying the sureties intended to be given, and their occupations and places of residence, and the officer before whom, and the place where, the stipulation will be offered, except in suits by seamen for wages, when such notice may be *instantly*.

18.

In all cases where the approval of the judge of this court of the sufficiency of sureties to bonds or stipulations is required, it shall be necessary to give notice in writing, a reasonable time previous to the application, to the proctor of the libellant in the action, stating the time and place of the application for such approval, and the name, occupation, and residence of the sureties to be offered; and the application shall be accompanied by proof of the service of such notice.

19.

All stipulations in causes civil and maritime shall be executed by the principal party (if within the state), and at least one surety resident therein, and shall contain the consent of the stipulators, that, in case of default or contumacy on the part of the principal or sureties, execution to the amount named in such stipulation may issue against the goods, chattels, and lands of the stipulators. The court will modify the execution as to the time it may stay and the amount to be collected, according to the equity of the case. Non-residents of the state must supply at least two sureties.

20.

In all cases of stipulations, in civil and admiralty causes, any party having an interest in the subject-matter, may move the court, on special cause shown, for greater or better security, giving the opposite party two days' notice thereof, unless a shorter time is allowed by order of the judge.

21.

The clerk shall provide a book, in which shall be registered or recorded all stipulations filed in causes civil and admiralty, which shall be open to the examination of all parties interested.

22.

No process *in rem* shall be issued, nor shall any appearance or answer be received, or third party be permitted to intervene and claim, except on the part of the United States, unless a stipulation, in the sum of two hundred and fifty dollars, shall be first entered into by the party, and at least one surety, resident in the state, conditioned that the principal shall pay all costs awarded against him by this court, or, in case of appeal, by the appellate court.

23.

But seamen suing for wages, in their own right and for their own benefit, for services on board American vessels, and salvors coming into port in possession of the property libelled, shall not be required to give such security in the first instance. The court, on motion, with notice to the libellants, may, after the arrest of the property, for adequate cause, order the usual stipulation to be given in these cases, or that the property arrested be discharged.

24.

Notice of the arrest of property by attachment *in rem*, in behalf of individual suitors, shall be published in the manner directed by Act of Congress in case of seizures on the part of the United States, except when the judge by special order directs a shorter notice than fourteen days; and except that, instead of the substance of the libel, a short statement of its purport may be given.

25.

Notice of sale of property after condemnation, in suits *in rem* (except under the revenue laws and on seizure by the United States), shall be six days, unless otherwise specially directed in the decree of condemnation and sale. All such notices shall be published in the manner directed by Act of Congress, in the case of condemnation under the revenue laws.

26.

After a citation or monition, or warrant of arrest, in suits *in personam*, returned "served personally," if the defendant do not appear at the return day, he shall be deemed in contumacy and in default, and the libellant may take an order for enforcement of the stipulation (in case any is given), or to compel the defendant's appearance, according to the course of admiralty proceed-

ings; or, at his option, may proceed to hearing *ex parte* and obtain the proper decree, unless the court, for good cause, shall allow the defendant further time.

27.

In case of seizure of property in behalf of the United States, an appraisement for the purpose of bonding the same, may be had by any party in interest, on giving one day's previous notice of motion before the court, or the judge in vacation, for the appointment of appraisers. If the parties or their proctors and the District-Attorney are present in court, such motion may be made *instantly*, after seizure, and without previous notice.

28.

Orders for the appraisement of property under arrest at the suit of an individual, may be entered, of course, by the clerk, at the instance of any party interested therein, or upon filing the consent of the proctors for the respective parties. Only one appraiser is to be appointed in suits by individuals, unless otherwise specially ordered by the judge, and, if the respective parties do not agree in writing upon the appraiser to be appointed, the clerk shall forthwith name him, either party having a right of appeal *instantly* to the judge from such nomination, for adequate cause.

29.

Appraisers, before executing their trust, shall be sworn or affirmed to its faithful discharge, before the clerk or his deputy (who are hereby appointed commissioners for the qualification of appraisers), and shall give one day's previous notice of the time and place of making the appraisement, by affixing the same in a conspicuous place adjacent to the United States Court Rooms, and where the marshal usually affixes his notices, to the end that all persons concerned may be informed thereof, and the appraisement, when made, shall be returned to the clerk's office; and like notice shall also be given to the adverse party, by the party obtaining the order of appraisement.

30.

Appraisers acting under an order of this court, shall be severally entitled to three dollars for each day necessarily employed in making the appraisement, to be paid by the party at whose instance the same shall be ordered.

31.

In suits *in rem* for seamen's wages, and in all other actions *in rem* for sums certain, the claimant or respondent may pay into court the amount sworn to be

due in the libel, with interest computed thereon from the time it was due, to the stated term next succeeding the return day of the attachment, and the costs of the officers of court already accrued, together with the sum of two hundred and fifty dollars to cover further costs, &c. ; or, at his option, may give stipulation to pay such sworn amount, with interest, costs, and damages (first paying into court the costs of the officers of court already accrued), and, in either case, may thereupon have an order entered *instantly*, for discharge of the property arrested, without having the same appraised.

32.

No vessels, goods, wares, or merchandise in the custody of the marshal shall be released from detention, upon appraisement and surety, until the costs and charges of the officers of this court, so far as the same shall have accrued, shall first be paid into court by the party at whose instance the appraisement shall take place, to abide the decision of the court in respect to such costs.

33.

No property in the custody of any officer of the court shall be released without the order of the court; but (except in possessory or petitory actions), such order may be entered, of course, by the clerk, on filing a written consent thereto by the proctor in whose behalf it is detained; and, also, after appraisement and bond duly executed. No property detained in possessory or petitory suits, will be discharged from custody upon stipulation, or otherwise, except upon motion, and due cause shown, which motion may be made by either party on reasonable notice to the adverse party.

34.

If, in possessory suits, after decrees for either party, the other shall make application to the court for a proceeding in a petitory suit, and file the proper stipulation, the property shall not be delivered over to the prevailing party, until after an appraisement made, nor until he shall give a stipulation with sureties to restore the same property without waste, in case his adversary shall prevail in the petitory suit, and also to abide as well all interlocutory orders and decrees, as the final sentence and decree of the District Court, and, on appeal, of the appellate court.

35.

A tender *inter partes* shall be of no avail in defence, or in discharge of costs, unless, on suit brought, and before answer, plea, or claim filed, the same tender is deposited in court, to abide the order or decree to be made in the matter. When tender is first made after suit brought, it must include taxable costs then accrued.

36.

No party can intervene by claim, without proof of a subsisting interest in the subject-matter of the claim. This proof may, in the first instance, be the oath of the claimant, but subject to denial and disproof on the part of the libellant, on issue thereto or on summary petition.

37.

Defence may be made by answer or claim, of matters of law or fact, without the employment of exceptions or special pleas usual in causes of civil and maritime jurisdiction, other than exceptions to the competency of the party or the process, or other matter of abatement.

38.

An answer or claim on the part of the United States is to be put in without oath, by the District Attorney, and is not subject to exception for insufficiency.

39.

The defendant may, on the return day of process, and before answering, demurring, or pleading, file an exception to the libel, that it is multifarious or ambiguous, or without plain allegations upon which issue can be taken; and, if it be adjudged by the court insufficient, for any of these causes, and be not amended by the libellant within two days thereafter, it shall be dismissed, with costs. Proceeding upon such exceptions shall conform to those on exceptions to answers or other pleadings.

40.

The libellant may, within four days from the filing of the answer or claim, file exceptions thereto, for insufficiency, irrelevancy, or scandal, which exceptions shall briefly and clearly specify the parts excepted to, by the line and page of the papers in the clerk's office; whereupon, the party answering or claiming shall, in four days, give notice to the libellant of his submitting to the exceptions, or the exceptions will be set down for hearing, for the earliest day afterwards.

41.

If a party submit to exceptions for insufficiency, he shall answer further, within four days after notice of his submitting. If the exceptions are allowed on hearing, he shall answer further within such time as the court shall direct; and, if the hearing of the exceptions shall not be duly brought on, or the further answer duly put in, the claim or answer excepted to shall be treated as a nullity, and the default of the party be entered.

42.

If exceptions for irrelevancy be submitted to, or be allowed by the court, or the hearing be not duly brought on by the respondent, the matter excepted to shall be struck out of the claim or answer by the clerk.

43.

When various actions are pending, all resting upon the same matter of right or defence, the court, by order, at its discretion, will compel the parties to abide by the decision rendered in one case, and will enter a decree in the other causes conformably thereto, although there be no common interest between the parties.

44.

Commissions for taking testimony, shall be moved for in four days after the claim or answer is filed and perfected (if the same shall have been excepted to); but if interrogatories shall be propounded for the other party, by the party who moves for a commission, he shall have four days for moving after the answers to the interrogatories shall be perfected; otherwise, such commission shall not operate to stay proceedings; but, on a proper case shown, application for a commission and for a stay of proceedings may be made at any time after the action is commenced, and before issue joined, or after a default or interlocutory decree.

45.

Affidavits on which a motion for a commission is made shall specify the facts expected to be proved, together with the names of the witnesses, and the shortest time within which the party believes the testimony may be taken and the commission returned. On special cause shown, an order for the examination of parties not named, may be applied for on notice to the adverse party.

46.

A commission will not be allowed to stay proceedings, if the opposite party admits in writing that the witnesses will depose to the facts stated in such affidavit; such affidavit, with the admission, may be read on the trial or hearing, and will have the same effect as a deposition to those facts by the witness or witnesses named.

47.

The motion may be noticed and made at term, before the court, or in vacation before the judge out of court, and only one commissioner will be named, unless special cause is shown for appointing a greater number, nor will costs be taxed for the services of more than one, except where both parties require a greater number.

48.

Interrogatories for the direct and cross examination, in case the parties disagree respecting them, shall be presented to the judge for his allowance at one time, and one day's notice of such reference shall be given by the party objecting to the opposite interrogatories.

49.

Cross interrogatories shall be served within four days after the direct have been received, or they shall be regarded as assented to, and, if no notice of reference to the judge is given within five days after both direct and cross interrogatories have been served, each party shall be deemed to have assented to the interrogatories served.

50.

The interrogatories, direct and cross, as agreed to by the parties, or settled by the judge, shall be annexed to the commission. Directions as to the execution and return of the commission, signed by the clerk, shall accompany the commission.

51.

Depositions taken under commission, or otherwise, shall be forwarded to the clerk immediately after they are taken, and be filed on their return to the clerk's office, in term or vacation, and notice thereof shall be forthwith given by the party filing them to the proctor of the opposite party. And all objections to the form and manner in which they were taken or returned shall be deemed waived, unless such objection shall be specified in writing in four days after notice that the same are opened, unless further time shall be granted by the judge.

52.

In suits between individuals, either party may, at any time after the commissions or depositions are deposited with the clerk, enter an order of course, as of a special sessions, if in vacation, to open the same and deliver copies thereof.

53.

In suits on seizures, in which the United States are a party, such order may be entered on the written consent of the proctors or attorneys of the respective parties, or on motion to the court at a stated or special session.

54.

Opening such commissions or depositions shall not preclude either party from objecting to the competency or relevancy of the evidence when offered on the trial.

55.

Exceptive allegations to the credibility or competency of witnesses examined on deposition or commission, may be filed within four days after the depositions or commissions are opened at the clerk's office, and notice shall be given forthwith of such exceptions. Testimony impeaching or supporting the witnesses may, in such case, be given by the parties respectively, on the hearing of the cause, and may be taken in the same manner as proofs in chief.

56.

Depositions *in perpetuam rei memoriam*, to be used in this court, may be taken under a *dedimus potestatem*, or by any officer authorized by Act of Congress to take depositions *de bene esse*, to be used in the Courts of the United States, when so ordered by the judge.

57.

When either party shall require *viva voce* testimony given in open court, to be taken down by the clerk pursuant to the Act of Congress, it shall be taken in the same manner as in jury trials on common law issues and not *verbatim*, as in depositions *de bene esse*.

58.

The notes of the judge or of a stenographer, when one is employed by consent of parties, may, by assent of parties, be used as if taken down by the clerk.

59.

Either party desiring to diminish, vary, or enlarge the minutes of proofs, may, within five days after the close of the testimony, serve a statement of proofs on the proctor of the opposite party, and such statement, if assented to, or, if no amendments are proposed thereto, within two days thereafter, by such proctor, shall be regarded as the true minutes of the testimony given, and the notes be corrected in conformity thereto.

60.

If amendments are proposed and the parties do not agree therein, the statements and amendments shall be forthwith referred to the judge, and he shall settle or determine how the facts are, and the statement thus settled or adjusted shall be filed as the true minutes of the testimony given.

61.

Either party may except to the report of a clerk or commissioner, and set down the exceptions for hearing, on two days' notice, at the first stated or

special sessions thereafter, or the clerk will place the cause on the next admiralty calendar.

62.

Upon the coming in of the report, an order of confirmation *nisi* may be entered, on motion, without notice, unless otherwise ordered by the court, or the report shall be excepted to; and if no exceptions be filed within four days after notice of such confirmation, decree final may be entered.

63.

A guardian *ad litem* will be appointed, on a petition, verified by oath, stating a proper case for such appointment; and the guardian shall give stipulations for costs, &c., the same as if he was personally the party in interest.

64.

Infants may sue by *prochein ami*, to be first approved by the court; the *prochein ami* to give stipulations, and be responsible for costs, in the same manner as the infant would be if of full age.

65.

Suits can only be prosecuted or defended in *forma pauperis* by express allowance of the court. In such case, the pauper will be discharged of all stipulations or liabilities for costs. But the court, on satisfactory proof of the inability of a party to comply with the usual stipulations in a cause, may mitigate and modify such stipulations conformably to the equities or exigencies of the case.

66.

Where proceedings on a decree shall not be stayed by an appeal, and the decree shall not be fulfilled or satisfied in ten days after notice to the proctor of the party against whom it shall be rendered, it shall be of course to enter an order that the sureties of such party cause the engagement of their stipulation to be performed, or show cause in four days, or on the first day of jurisdiction afterwards, why execution should not issue against them, their lands, goods, and chattels, according to their stipulation; and, if no cause be then shown, due service having been made on the proctor of the party, a summary decree shall be rendered against them on their stipulations, and execution issue; but the same may be discharged on the performance of the decree and payment of all costs.

67.

A special session of the court (besides the sittings on Wednesday of each week) may be opened at any time *instante*, on the allowance of the judge, for

hearing and disposing of special motions, arguments on questions of law, and also for taking proofs, or hearing admiralty and maritime or revenue causes, and rendering interlocutory or final decrees therein.

68.

Whenever, from the death of any of the parties, or changes of interest in the suit, defect in the pleadings or proceedings, or otherwise, new parties to the suit are necessary, the persons required to be made parties may be made such either by a petition on their part or on the part of the adverse party.

69.

In either mode, it shall be sufficient to allege briefly the prayer of the original libel, the several proceedings in the cause and the date thereof, and to pray that such persons required to be made parties to the suit may be made such parties.

70.

On service of a copy of such petition and of notice of the presenting thereof, such order shall be made for the further proceeding in the cause as shall be proper for its speedy and convenient prosecution as to such new parties, and the same stipulations and security shall, in all such cases, be required and given, as in cases of persons becoming originally parties to a suit.

71.

A party shall not be held to enter his appeal from any decree or order of the court as final, unless the same is in a condition to be executed against him without further proceedings therein in court.

72.

Ten days from the time of rendering the decree shall be allowed to enter an appeal, within which time the decree shall not be executed. A brief notice in writing to the clerk and opposite proctor, that the party appeals in the cause, shall be a sufficient entry of the appeal, without any petition to the court for leave to enter the same.

73.

When an appeal shall be so entered, the appellant shall, within ten days after filing the notice, give security for damages and costs; and, if security shall not be given within that time, the decree may be executed as if there had been no appeal, unless further time be allowed by the court.

74.

The appellant shall give four days' notice to the adverse party, or his proc-
tor, of the person or persons proposed as his sureties, with their additions and
descriptions, and of the time and place of giving the stipulation.

75.

When an appeal shall be entered, the appellant shall cause the proceedings
of the court, required by law to be transmitted to the Circuit Court, to be
transcribed for that purpose within thirty days after the appeal shall be en-
tered in this court; and, in default thereof, the decree shall be executed as if
there had been no appeal, unless the court shall, upon special motion of the
appellant, otherwise order.

76.

No libel of review will be entertained in cases subject to appeal, nor unless
filed before the enrolment of the decree or return of final process issued in the
cause.

77.

When any moneys shall come to the hands of the marshal under, or by vir-
tue of any order or process of the court, he shall forthwith pay over the gross
amount thereof to the clerk, with a bill of his charges thereon, and a state-
ment of the time of the receipt of the moneys by him, and, upon the filing of
such statements, and the taxation of such charges, the same shall be paid to
the marshal out of such moneys; and the general account of all property,
sold under the order or decree of this court, shall be returned by the marshal
and filed in the clerk's office, with the execution or other process under which
the sale was made.

78.

All bills of costs and of charges to be paid under any order or decree of this
court, shall be taxed and filed with the clerk before payment thereof; and, if
the same shall include charges for disbursements other than to the officers of
the court, the proper and genuine vouchers, or an affidavit thereof (in cases
of loss of vouchers), shall be exhibited and filed, and, if such bill shall be
taxed without four days' notice to all parties concerned, they shall be subject
to a re-taxation, of course, on application by any such party, not having had
notice, and at the charge of the party obtaining such taxation.

79.

The clerk is authorized to tax or certify bills of costs and to sign judgments,
and also take acknowledgments of the satisfaction of judgments and all affi-

oaths out of court, as in open court, in all cases where the same are not required by law to be taken in open court.

80.

The deputies or chief clerks of the clerk of this court, not exceeding two in number, and named and designated by an appointment filed in the office of said clerk, are each authorized to sign judgments, to tax and certify all bills of the costs in this court, other than those of the clerk, and also to affix the seal of the court and certify proceedings or papers in the name of the clerk, in all other cases than exemplifications of the records or files of the court, and to perform all duties appertaining to the clerk by the appointment of the court, or the course of practice, which are not specifically appointed by statute to be performed by the clerk. •

81.

The clerk is authorized to enter satisfaction of record of any judgment rendered in this court in behalf of the United States, on filing acknowledgment of satisfaction of the same duly made by the District Attorney.

82.

Attorneys, proctors, and advocates of any Circuit or District Court of the United States, and attorneys of the Supreme Court of this state, may be admitted proctors and advocates of this court, upon taking the oaths prescribed by the Constitution and Laws of the United States. But no such admission will be granted, unless the same be moved by some proctor or advocate of the court.

83.

No notice of trial or note of issue, in any cause, shall be required to place a cause upon the calendar. An admiralty calendar shall, for each term designated for the hearing of admiralty causes, be made up by the clerk, who will place thereon all causes at issue in their proper order, and will thereupon, and at least four days prior to the commencement of the term, give notice to the respective proctors of the placing of the cause upon such calendar, with the number thereof, together with the time and place when and where the same will be called. Proof of service of such notice of trial shall be furnished by the certificate of the clerk. The calendar will be called upon the day designated in such notice, and the default of any party not attending may be entered without further notice upon filing proof of service of the notice.

84.

Upon consent of the parties, or upon the order of the court, any cause may be omitted from the calendar, until the further order of court.

85.

At any term, when no admiralty calendar has been made up, the proctor in any cause may, upon two days' notice to the other side, apply to have the same heard upon a day to be designated by the court.

86.

Where bail is taken by the marshal, the bond or stipulation shall be forthwith filed in court, and upon such filing, and the justification of the sureties before the clerk or a commissioner duly authorized, on notice to the libellant of the time and place thereof, the marshal shall be deemed discharged of responsibility for the appearance of the defendant.

The marshal shall be deemed in like manner discharged by the omission of the libellant to give written notice to the marshal, to be served within five days after the receipt of notice in writing of the filing of the bond, that the sureties are required so to justify. An appeal may be taken *instantly* to the judge from the decision of the clerk or commissioner as to the sufficiency of the sureties, in which case, the justification shall not be deemed complete until the affirmation of the decision by the judge.

STATUTES.

FEE BILL.

An Act to Regulate the Fees and Costs to be allowed Clerks, Marshals, and Attorneys of the Circuit and District Courts of the United States, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That in lieu of the compensation now allowed by law to attorneys, solicitors, and proctors in the United States courts, to United States district attorneys, clerks of the district and circuit courts, marshals, witnesses, jurors, commissioners, and printers, in the several states, the following and no other compensation shall be taxed and allowed. But this act shall not be construed to prohibit attorneys, solicitors, and proctors from charging to and receiving from their clients, other than the Government, such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage in their respective states, or may be agreed upon between the parties.

Fees of Attorneys, Solicitors, and Proctors. — In a trial before a jury, in civil and criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of twenty dollars :

Provided, That in cases in admiralty and maritime jurisdiction, where the libellant shall recover less than fifty dollars, the docket fee of his proctor shall be but ten dollars. . . .

For *scire facias* and other proceedings on recognizances, *five dollars*.

For each deposition taken and admitted as evidence in the cause, *two dollars and fifty cents*.

A compensation of *five dollars* shall be allowed for the services rendered in cases removed from a district to a circuit court by writ of error or appeal.

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If any attorney, proctor, or other person admitted to manage or conduct causes in any court of the United States, or of the Territories thereof, shall appear to have multiplied the proceedings in any cause before such court, so as to increase costs unreasonably and vexatiously, such person may be required, by order of the court, to satisfy any excess of costs so increased. . . .

Clerk's Fees. — For issuing and entering every process, commission, summons, capias, execution, warrant, attachment, or other writ, except a writ of venire, summons, or subpoena for a witness, *one dollar*.

For filing and entering every declaration, plea, or other paper, *ten cents*.

For administering every oath or affirmation to a witness, or other person, except a juror, *ten cents*.

For entering any return, rule, order, continuance, judgment, decree, or recognizance, drawing any bond, or making any record, certificate, return, or report, for each folio *fifteen cents*; and for a copy of any such entry or record, or of any paper on file, not exceeding one folio, *ten cents*; and for each additional folio, *ten cents*.

For making dockets and indexes, and for all other services on the trial or argument of a cause, where issue is joined and testimony given, including venire and taxing costs, *three dollars*.

For making dockets and indexes, and for all other services in a cause where issue is joined and no testimony given, including taxing costs, *two dollars*.

For making dockets and indexes, and for taxing costs and other services, in a cause which is dismissed, discontinued, or a judgment or decree is made or rendered therein, without issue, *one dollar*.

In equity and admiralty causes, only the process, pleadings, and decree, and such orders and memorandums as may be necessary to show the jurisdiction of the court and regularity of the proceedings, shall be entered upon the final record; and, in case of an appeal, copies of the proofs, and of such entries and papers on file as may be necessary on hearing of the appeal, may be certified up to the appellate court. For affixing a seal of the courts to any instrument when required, *twenty cents*.

For issuing a writ of *suppna*, *twenty-five cents*.

For receiving, keeping, and paying out money, in pursuance of the requirements of any statute, or order of court, *one per cent* on the amount so received, kept, and paid.

In cases removed by writ of error or appeal, the clerk's fees for making dockets and taxing costs shall be but *one dollar*, and the clerks of the district and circuit courts respectively, *ex officio*, shall be, and hereby are, authorized and empowered to administer oaths, take acknowledgments, take and certify affidavits and depositions, in the same manner as commissioners, and shall be entitled to the same fees and compensation therefor.

Marshal's Fees. — For service of any warrant, attachment, summons, capias, or other writ (except execution, venire, or a summons or subpoena for a witness), *two dollars* for each person on whom such service may be made: *Provided*, That on petition, setting forth the facts on oath, the court may allow such fair compensation for the keeping of personal property attached and held on mesne process, as shall, on examination, be found to be reasonable.

For serving a writ of *suppna* on a witness, *fifty cents*; and no further compensation shall be allowed for any copy, summons, or notice for witness.

For travel in going only to serve any process, warrant, attachment, or other writ, including writs of subpoena in civil and criminal cases, *six cents per mile*, to be computed from the place of service to the court or place where the writ or process is returned; and if more than one person is served therewith, the travel shall be computed from the court to the place of service which shall be the most remote, adding thereto the extra travel, which shall be necessary to serve it on the other: *Provided*, That when more than two writs of any kind, in behalf of the same party or parties, to be served on the same person or persons, or part of the same persons, are or might be served at the same time, the marshal shall be entitled to compensation for travel on only two of such writs; and to save unnecessary expense, it shall be the duty of the clerk to insert the names of as many witnesses in a cause, in such subpoena, as convenience in serving the same will permit. And in all cases where mileage is allowed to the marshal by this act, it shall be at his option to receive the same, or his actual travelling expenses, to be proved on his oath to the satisfaction of the court.

For each bail-bond, *fifty cents*.

For summoning appraisers, each *fifty cents*.

For every commitment or discharge of a prisoner, *fifty cents*.

For every proclamation in admiralty, *thirty cents*.

For sales of vessels or other property, under process in admiralty, or under the order of a court of admiralty, and for receiving and paying the money, for any sum under five hundred dollars, *two and one half per centum*; for any larger sum, *one and one quarter per centum*, upon the excess.

For serving an attachment *in rem* or a libel in admiralty, *two dollars*; and the necessary expenses of keeping boats, vessels, or other property attached or libelled in admiralty, *not exceeding two dollars and fifty cents per day*; and in case the debt or claim shall be settled by the parties, without a sale of the property, the marshal shall be entitled to a commission of *one per cent* on the first five hundred dollars of the claim or decree, and *one half of one per cent* on the excess over five hundred dollars: *Provided*, That in case the value of the property shall be less than the claim, then, and in such case, such commission shall be allowed only on the appraised value thereof.

For serving a writ of possession, partition, execution, or any final process, *the same mileage* as is herein allowed for the service of any other writ; and for making the service, seizing or levying on property, advertising and disposing of the same by sale, set off, or otherwise, according to law, receiving and paying over the money, *the same fees and poundage* as are or shall be allowed for similar services to the sheriffs of the several states, respectively, in which the service may be rendered.

For copies of writs or papers furnished at the request of any party, *ten cents per folio*.

Commissioner's Fees. — For administering an oath, *ten cents*; taking an acknowledgment, *twenty-five cents*.

For attending to a reference in a litigated matter in a civil cause at law, in equity, or in admiralty, in pursuance of an order of court, *three dollars per day.*

For taking and certifying depositions to file, *twenty cents* for each folio of one hundred words, and *ten cents* per folio for each copy of the same furnished to a party on request.

For issuing any warrant, or writ, or any other service. *the same compensation* as is allowed to clerks for like services.

Witnesses' Fees. — For each day's attendance in court, or before any officer pursuant to law, *one dollar and fifty cents*, and *five cents per mile* for travelling from his place of residence to said place of trial or hearing, and *five cents per mile* for returning. When a witness is subpoenaed in more than one cause between the same parties in different suits at the same court, but one travel fee and one *per diem* compensation shall be allowed for attendance, to be taxed in the first case disposed of; and "*per diem*" only in the other causes, to be taxed from that time in each case in the order in which they may be disposed of.

When a witness is detained in prison for want of security for his appearance, he shall be entitled to a compensation of *one dollar per day* over and above his subsistence.

Printers' Fees. — For publishing any statute, notice, or order required by law, or the lawful order of any court, department, bureau, or other person, in any newspaper, *forty cents per folio* for the first insertion, and *twenty cents per folio* for each subsequent insertion. That the compensation herein provided shall include the furnishing lawful evidence, under oath, of publication, to be made and furnished by the printer or publisher making such publication.

The term "*folio*" in this act, shall mean one hundred words, counting each figure as a word. When there are over fifty and under one hundred words, they shall be counted as one folio, but not when there are less, except when the whole statute, notice, or order contains less than fifty words.

Taxable Costs. — The bill of fees of clerk, marshal, and attorneys, and the amount paid printers and witnesses, and lawful fees for exemplifications and copies of papers necessarily obtained for use on trial in cases where by law costs are recoverable in favor of the prevailing party, shall be taxed by a judge or clerk of the court, and be included in, and form a portion of a judgment or decree against the losing party. Such taxed bills shall be filed with the papers in the cause.

Costs in Prize Cases. — In prize cases, where there is a condemnation and sale, the costs, so far as they are payable, and can be paid out of the proceeds of sale, shall be paid on the order of the court, upon the filing of the taxed bills, making them a portion of the record in the case.

APPROVED February 26, 1853.

UNITED STATES COMMISSIONERS.

An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be lawful for the Circuit Court of the United States to be holden in any district in which the present provision, by law, for taking bail and affidavits in civil causes (in cases where such affidavits are, by law, admissible), is inadequate, or on account of the extent of such district, inconvenient, to appoint such and so many discreet persons, in different parts of the district as such court shall deem necessary, to take acknowledgments of bail and affidavits; which acknowledgments of bail and affidavits shall have the like force and effect as if taken before any judge of said court; and any person swearing falsely in and by any such affidavit, shall be liable to the same punishment as if the same affidavit had been made or taken before a judge of said court.

SECT. 2.—*And be it further enacted,* That the like fees shall be allowed for taking such bail and affidavit as are allowed for the like services by the laws of the state in which any such affidavit or bail shall be taken.

SECT. 3.—*And be it further enacted,* That in any cause before a court of the United States, it shall be lawful for such court, in its discretion, to admit in evidence any deposition taken in *perpetuam rei memoriam*, which would be so admissible in a court of the state wherein such cause is pending, according to the laws thereof.

APPROVED February 20, 1812.

An Act in addition to an Act entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the commissioners who now are, or hereafter may be, appointed by virtue of the act entitled "An Act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," are hereby authorized to take affidavits and bail in civil causes, to be used in the several district courts of the United States, and shall and may exercise all the powers that a justice or judge of any of the courts of the United States may exercise by virtue of the thirtieth section of the act entitled "An Act to establish the judicial courts of the United States."

• APPROVED March 1, 1817.

DEPOSITIONS DE BENE ESSE.

An Act to establish the Judicial Courts of the United States.

SECT. 30. — *And be it further enacted*, That the mode of proof by oral testimony and examination of witnesses in open court shall be the same in all the courts of the United States, as well in the trial of causes in equity and of admiralty and maritime jurisdiction, as of actions at common law. And when the testimony of any person shall be necessary in any civil cause depending in any district, in any court of the United States, who shall live at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of such district, and to a greater distance from the place of trial than as aforesaid, before the time of trial, or is ancient or very infirm, the deposition of such person may be taken *de bene esse* before any justice or judge of any of the courts of the United States, or before any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, or judge of a county court or court of common pleas of any of the United States, not being of counsel or attorney to either of the parties, or interested in the event of the cause, provided that a notification from the magistrate before whom the deposition is to be taken to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, be first made out and served on the adverse party or his attorney, as either may be nearest, if either is within one hundred miles of the place of such caption, allowing time for their attendance after being notified, not less than at the rate of one day, Sundays exclusive, for every twenty miles' travel. And in causes of admiralty and maritime jurisdiction, or other cases of seizure, when a libel shall be filed, in which an adverse party is not named, and depositions of persons circumstanced as aforesaid shall be taken before a claim be put in, the like notification as aforesaid shall be given to the person having the agency or possession of the property libelled at the time of the capture or seizure of the same, if known to the libellant. And every person deposing as aforesaid shall be carefully examined and cautioned, and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence. And the depositions so taken shall be retained by such magistrate until he deliver the same with his own hand into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid of their being taken, and of the notice if any given to the adverse party, be by him, the said magistrate, sealed up and directed to such court, and remain under his seal until opened in court. And any person may be compelled to appear and depose as aforesaid in the same manner as to appear and testify in court. And in the trial of any cause of admiralty or maritime jurisdiction in a district court, the decree in which may be

appealed from, if either party shall suggest to and satisfy the court that probably it will not be in his power to produce the witnesses there testifying before the circuit court should an appeal be had, and shall move that their testimony be taken down in writing, it shall be so done by the clerk of the court. And if an appeal be had, such testimony may be used on the trial of the same, if it shall appear to the satisfaction of the court which shall try the appeal, that the witnesses are then dead or gone out of the United States, or to a greater distance than as aforesaid from the place where the court is sitting, or that by reason of age, sickness, bodily infirmity, or imprisonment, they are unable to travel and appear at court, but not otherwise. And unless the same shall be made to appear on the trial of any cause, with respect to witnesses whose depositions may have been taken therein, such depositions shall not be admitted or used in the cause: *Provided*, That nothing herein shall be construed to prevent any court of the United States from granting a *dedimus potestatem* to take depositions according to common usage, when it may be necessary to prevent a failure or delay of justice which power they shall severally possess; nor to extend to depositions taken in *perpetuam rei memoriam*, which if they relate to matters that may be cognizable in any court of the United States, a circuit court on application thereto made, as a court of equity, may, according to the usages in chancery, direct to be taken.

APPROVED September 24, 1789.

COMMISSIONS.

An Act to provide for taking evidence in the courts of the United States, in certain cases.

SECT. 1. — *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That, whenever a commission shall be issued, by any court of the United States, for taking the testimony of a witness or witnesses, at any place within the United States, or the territories thereof, it shall be lawful for the clerk of any court of the United States, for the district or territory within which such place may be, and he is hereby enjoined and required, upon the application of either of the parties in the suit, cause, action, or proceeding, in which such commission shall have been issued, his, her, or their agent or agents, to issue a subpoena or subpoenas, for such witness or witnesses, residing or being within the said district or territory, as shall be named in the said commission, commanding such witness or witnesses to appear and testify before the commissioner or commissioners, in such commission named, at a time and place in the subpoena to be stated; and if any witness, after being duly served with such subpoena, shall refuse or neglect to appear, or, after appearing, shall refuse to testify (not being privileged from giving testi-

mony), such refusal or neglect being proved to the satisfaction of any judge of the court, whose clerk shall have issued such subpoena or subpoenas, he may thereupon proceed to enforce obedience to the process, or to punish the disobedience, in like manner as any court of the United States may do in case of disobedience to process of *subpoena ad testificandum*, issued by such court; and the witness or witnesses, in such cases, shall be allowed the same compensation as is allowed to witnesses attending the courts of the United States: *Provided*, That no witness shall be required to attend at any place out of the county in which he may reside, nor more than forty miles from his place of residence, to give his or her deposition, under this law.

SECT. 2.— *And be it further enacted*, That whenever either of the parties in such suit, cause, action, or proceeding, shall apply to any judge of a court of the United States, in the district or territory of the United States in which the place for taking such testimony may be, for a *subpoena duces tecum*, commanding the witness, therein to be named, to appear and testify before the said commissioner or commissioners, at the time and place in the said subpoena to be stated, and also to bring or carry with him or her, and produce to such commissioner or commissioners, any paper, writing, or written instrument, or book, or other documents supposed to be in the possession or power of such witness, such judge being satisfied, by the affidavit of the person applying, or otherwise, that there is reason to believe that such paper, writing, written instrument, book, or other document, is in the possession or power of the witness, and that the same, if produced, would be competent and material evidence for the party applying therefor, may order the clerk of the court, of which he is a judge, to issue such *subpoena duces tecum*, accordingly, and if such witness, after being duly served with such *subpoena duces tecum*, shall fail to produce any such paper, writing, written instrument, book or other document, being in the possession or power of such witness, and described in such *subpoena duces tecum*, before, and to such commissioner or commissioners, at the time and place in such subpoena stated, such failure being proved to the satisfaction of the said judge, he may proceed to enforce obedience to the said process of *subpoena duces tecum*, or to punish the disobedience, in like manner as any court of the United States may do in case of disobedience to a like process, issued by such court; and when any such paper, writing, written instrument, book, or other document, shall be produced to such commissioner or commissioners, he or they shall, at the cost of the party requiring the same, cause to be made a fair and correct copy thereof, or of so much thereof as shall be required by either of the parties: *Provided*, That no witness shall be deemed guilty of contempt for disobeying any subpoena directed to him by virtue of this act, unless his fees for going to, returning from, and one day's attendance at the place of examination, shall be paid or tendered to him at the time of the service of the subpoena.

APPROVED January 14, 1827.

COMMISSIONERS TO ACT AS MAGISTRATES, &c.

An Act further supplementary to an Act entitled "An Act to establish the judicial courts of the United States," passed the twenty-fourth of September, seventeen hundred and eighty-nine.

SECT. 1. — *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the commissioners who now are, or hereafter may be, appointed by the circuit courts of the United States to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes, shall and may exercise all the powers that any justice of the peace, or other magistrate, of any of the United States, may now exercise in respect to offenders for any crime or offence against the United States, by arresting, imprisoning, or bailing the same, under and by virtue of the thirty-third section of the act of the twenty-fourth of September, Anno Domini seventeen hundred and eighty-nine, entitled "An Act to establish the judicial courts of the United States;" and who shall and may exercise all the powers that any judge or justice of the peace may exercise under and in virtue of the sixth section of the act passed the twentieth of July, Anno Domini seventeen hundred and ninety, entitled "An Act for the government and regulation of seamen in the merchant service."

SECT. 2. — *And be it further enacted,* That in all hearings before any justice or judge of the United States, or any commissioner appointed as aforesaid, under and in virtue of the said thirty-third section of the act entitled "An Act to establish the judicial courts of the United States," it shall be lawful for such justice, judge, or commissioner, where the crime or offence is charged to have been committed on the high seas or elsewhere within the admiralty and maritime jurisdiction of the United States, in his discretion, to require a recognizance of any witness produced in behalf of the accused, with such surety or sureties as he may judge necessary, as well as in behalf of the United States, for their appearing and giving testimony, at the trial of the cause, whose testimony, in his opinion, is important for the purposes of justice at the trial of the cause, and is in danger of being otherwise lost; and such witnesses shall be entitled to receive from the United States the usual compensation allowed to Government witnesses for their detention and attendance, if they shall appear and be ready to give testimony at the trial.

SECT. 3. — *And be it further enacted,* That the district courts of the United States shall have concurrent jurisdiction with the circuit courts of all crimes and offences against the United States, the punishment of which is not capital. And in such of the districts where the business of the court may require it to be done for the purposes of justice, and to prevent undue expenses and delays in the trial of criminal causes, the said district courts shall hold monthly ad-

journments of the regular terms thereof for the trial and hearing of such causes.

SECT. 4. — *And be it further enacted*, That in lieu of the punishment now prescribed by the sixteenth section of the act of Congress, entitled "An Act for the punishment of certain crimes against the United States," passed on the thirtieth day of April, Anno Domini one thousand seven hundred and ninety, for the offences in the said section mentioned, the punishment of the offender, upon conviction thereof, shall be by fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or by both, according to the nature and aggravation of the offence.

SECT. 5. — *And be it further enacted*, That the district courts as courts of admiralty, and the circuit courts as courts of equity, shall be deemed always open for the purpose of filing libels, bills, petitions, answers, pleas, and other pleadings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings whatever, preparatory to the hearing of all causes pending therein upon their merits. And it shall be competent for any judge of the court, upon reasonable notice to the parties, in the clerk's office or at chambers, and in vacation as well as in term, to make and direct and award all such process, commissions, and interlocutory orders, rules, and other proceedings, whenever the same are not grantable of course according to the rules and practice of the court.

SECT. 6. — *And be it further enacted*, That the Supreme Court shall have full power and authority, from time to time, to prescribe, and regulate, and alter, the forms of writs and other process to be used and issued in the district and circuit courts of the United States, and the forms and modes of framing and filing libels, bills, answers, and other proceedings and pleadings, in suits at common law or in admiralty and in equity pending in the said courts, and also the forms and modes of taking and obtaining evidence, and of obtaining discovery, and generally the forms and modes of proceeding to obtain relief, and the forms and modes of drawing up, entering, and enrolling decrees, and the forms and modes of proceeding before trustees appointed by the court, and generally to regulate the whole practice of the said courts, so as to prevent delays, and to promote brevity and succinctness in all pleadings and proceedings therein, and to abolish all unnecessary costs and expenses in any suit therein.

SECT. 7. — *And be it further enacted*, That, for the purpose of further diminishing the costs and expenses in suits and proceedings in the said courts, the Supreme Court shall have full power and authority, from time to time, to make and prescribe regulations to the said district and circuit courts, as to the taxation and payment of costs in all suits and proceedings therein; and to make and prescribe a table of the various items of costs which shall be taxable and allowed in all suits, to the parties, their attorneys, solicitors, and proctors, to the clerk of the court, to the marshal of the district, and his deputies, and

other officers serving process, to witnesses, and to all other persons whose services are usually taxable in bills of costs. And the items so stated in the said table, and none others, shall be taxable or allowed in bills of costs; and they shall be fixed as low as they reasonably can be, with a due regard to the nature of the duties and services which shall be performed by the various officers and persons aforesaid, and shall in no case exceed the costs and expenses now authorized, where the same are provided for by existing laws.

SECT. 8. — *And be further enacted*, That on all judgments in civil cases, hereafter recovered in the circuit or district courts of the United States, interest shall be allowed, and may be levied by the marshal, under process of execution issued thereon, in all cases where, by the law of the state in which such circuit or district court shall be held, interest may be levied under process of execution on judgments recovered in the courts of such state, to be calculated from the date of the judgment, and at such rate per annum as is allowed by law, on judgments recovered in the courts of such state.

APPROVED August 23, 1842.

SUMMONS FOR WAGES.

An Act for the government and regulations of Seamen in the merchant service.

SECT. 6. — *And be it further enacted*, That every seaman or mariner shall be entitled to demand and receive from the master or commander of the ship or vessel to which they belong, one third part of the wages which shall be due to him at every port where such ship or vessel shall unlade and deliver her cargo before the voyage be ended, unless the contrary be expressly stipulated in the contract; and as soon as the voyage is ended, and the cargo or ballast be fully discharged at the last port of delivery, every seaman or mariner shall be entitled to the wages which shall be then due according to his contract; and if such wages shall not be paid within ten days after such discharge, or if any dispute shall arise between the master and seamen or mariners touching the said wages, it shall be lawful for the judge of the district where the said ship or vessel shall be, or in case his residence be more than three miles from the place, or of his absence from the place of his residence, then, for any judge or justice of the peace, to summon the master of such ship or vessel to appear before him, to show cause why process should not issue against such ship or vessel, her tackle, furniture, and apparel, according to the course of admiralty courts, to answer for the said wages: and if the master shall neglect to appear, or appearing, shall not show that the wages are paid, or otherwise satisfied or forfeited, and if the matter in dispute shall not be forthwith settled, in such case the judge or justice shall certify to the clerk of the court of the district, that there is sufficient cause of complaint whereon to found admiralty process,

and thereupon the clerk of such court shall issue process against the said ship or vessel, and the suit shall be proceeded on in the said court, and final judgment be given according to the course of admiralty courts in such cases used; and in such suit all the seamen or mariners (having cause of complaint of the like kind against the same ship or vessel) shall be joined as complainants; and it shall be incumbent on the master or commander to produce the contract and log-book, if required, to ascertain any matters in dispute; otherwise the complainants shall be permitted to state the contents thereof, and the proof of the contrary shall lie on the master or commander; but nothing herein contained shall prevent any seaman or mariner from having or maintaining any action at common law for the recovery of his wages, or from immediate process out of any court having admiralty jurisdiction, wherever any ship or vessel may be found, in case she shall have left the port of delivery where her voyage ended, before payment of the wages, or in case she shall be about to proceed to sea before the end of the ten days next after the delivery of her cargo or ballast.

APPROVED July 20, 1790.

IMPRISONMENT FOR DEBT ABOLISHED.

An Act to abolish imprisonment for debt in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That no person shall be imprisoned for debt in any state, on process issuing out of a court of the United States, where by the laws of such state, imprisonment for debt has been abolished; and where by the laws of a state, imprisonment for debt shall be allowed, under certain conditions and restrictions, the same conditions and restrictions shall be applicable to the process issuing out of the courts of the United States; and the same proceedings shall be had therein, as are adopted in the courts of such state.

APPROVED February 28, 1839.

An Act supplementary to an Act to abolish imprisonment for debt in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the act entitled "An Act to abolish imprisonment for debt in certain cases," approved February twenty-eighth, eighteen hundred and thirty-nine, shall be so construed as to abolish imprisonment for debt, on process issuing out of any court of the United States, in all cases whatever, where, by the laws of the state in which the said court shall be held, imprisonment for debt has been, or shall hereafter be abolished.

APPROVED January 14, 1841.

An Act supplementary to the several Acts of Congress abolishing imprisonment for debt.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That whenever, upon mesne process or execution issuing out of any of the courts of the United States, any defendant therein is arrested or imprisoned, he shall be entitled to discharge from such arrest or imprisonment in the same manner as if he was so arrested or imprisoned on like process of the state courts in the same district. And the same oath may be taken, and the same length of notice thereof shall be required, as is provided by such state laws; and all modifications, conditions, and restrictions upon imprisonment for debt, now existing by the laws of any state, shall be applicable to process issuing out of the courts of the United States therein, and the same course of proceedings shall be adopted as now are or may be in the courts of such states. But all such proceedings shall be had before some one of the commissioners appointed by the United States Circuit Court to take bail and affidavits.

APPROVED March 2, 1867.

NOTARIES PUBLIC.

An Act to authorize Notaries Public to take and certify Oaths, Affirmations, and Acknowledgments in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That in all cases in which, under the laws of the United States, oaths, or affirmations, or acknowledgments may now be taken or made before any justice or justices of the peace of any state or territory, such oaths, affirmations, or acknowledgments may be hereafter also taken or made by or before any notary public duly appointed in any state or territory, and, when certified under the hand and official seal of such notary, shall have the same force and effect as if taken or made by or before such justice or justices of the peace. And all laws and parts of laws for punishing perjury, or subornation of perjury, committed in any such oaths or affirmations, when taken or made before any such justice of the peace, shall apply to any such offence committed in any oaths or affirmations which may be taken under this act before a notary public, or commissioner, as hereinafter named: *Provided, always,* That on any trial for either of these offences, the seal and signature of the notary shall not be deemed sufficient in themselves to establish the official character of such notary, but the same shall be shown by other and proper evidence.

SECT. 2.—*And be it further enacted,* That all the powers and authority conferred in and by the preceding section of this act upon notaries public be, and the same are hereby vested in, and may be exercised by, any commissioner

appointed, or hereafter to be appointed, by any circuit court of the United States, under any act of Congress authorizing the appointment of commissioners to take bail, affidavits, or depositions, in causes pending in the courts of the United States.

APPROVED September 16, 1850.

An Act supplementary to an Act entitled "An Act to authorize Notaries Public to take and certify Oaths, Affirmations, and Acknowledgments in certain cases."

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all the powers and authority conferred in and by the above recited act, approved September sixteenth, eighteen hundred and fifty, upon notaries public in the states and territories, be and the same are, vested in notaries public within the District of Columbia.

SECT. 2.—*And be it further enacted, That notaries public be and they are hereby authorized to take depositions and do such other acts in relation to evidence to be used in the courts of the United States, in the same manner and with the same effect, as commissioners to take acknowledgments of bail and affidavits may now lawfully take or do.*

APPROVED July 29, 1854.

LIABILITY OF SHIP-OWNERS.

An Act to limit the Liability of Ship-owners, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no owner or owners of any ship or vessel shall be subject or liable to answer for or make good to any one or more person or persons any loss or damage which may happen to any goods or merchandise whatsoever, which shall be shipped, taken in, or put on board any such ship or vessel, by reason or by means of any fire happening to or on board the said ship or vessel, unless such fire is caused by the design or neglect of such owner or owners: Provided, That nothing in this act contained shall prevent the parties from making such contract as they please, extending or limiting the liability of ship-owners.

SECT. 2.—*And be it further enacted, That if any shipper or shippers of platina, gold, gold-dust, silver, bullion, or other precious metals, coins, jewelry, bills of any bank or public body, diamonds or other precious stones, shall lade the same on board of any ship or vessel, without, at the time of such lading, giving to the master, agent, owner or owners of the ship or vessel receiving the same, a note in writing of the true character and value thereof, and have the same entered on the bill of lading therefor, the master and owner or owners of the said vessel shall not be liable, as carriers thereof, in any form or manner. Nor shall any such master or owners be liable for any*

such valuable goods beyond the value and according to the character thereof so notified and entered.

SECT. 3.— *And be it further enacted*, That the liability of the owner or owners of any ship or vessel, for any embezzlement, loss, or destruction, by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner or owners respectively, in such ship or vessel, and her freight then pending.

SECT. 4.— *And be it further enacted*, That if any such embezzlement, loss, or destruction, shall be suffered by several freighters or owners of goods, wares, or merchandise, or any property whatever, on the same voyage, and the whole value of the ship or vessel, and her freight for the voyage, shall not be sufficient to make compensation to each of them, they shall receive compensation from the owner or owners of the ship or vessel, in proportion to their respective losses; and for that purpose the said freighters and owners of the property, and the owner or owners of the ship or vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner or owners of the ship or vessel may be liable amongst the parties entitled thereto. And it shall be deemed a sufficient compliance with the requirements of this act, on the part of such owner or owners, if he or they shall transfer his or their interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person or persons who may prove to be legally entitled thereto, from and after which transfer, all claims and proceedings against the owner or owners shall cease.

SECT. 5.— *And be it further enacted*, That the charterer or charterers of any ship or vessel, in case he or they shall man, victual, and navigate such vessel at his or their own expense, or by his or their own procurement, shall be deemed the owner or owners of such vessel within the meaning of this act; and such ship or vessel, when so chartered, shall be liable in the same manner as if navigated by the owner or owners thereof.

SECT. 6.— *And be it further enacted*, That nothing in the preceding sections shall be construed to take away or affect the remedy to which any party may be entitled, against the master, officers, or mariners, for or on account of any embezzlement, injury, loss, or destruction of goods, wares, merchandise, or other property, put on board any ship or vessel, or on account of any negligence, fraud, or other malversation of such master, officers, or mariners, respectively, nor shall anything herein contained lessen or take away any responsibility to which any master or mariner of any ship or vessel may now by law be liable, notwithstanding such master or mariner may be an owner or part owner of the ship or vessel.

SECT. 7.— *And be it further enacted*, That any person or persons shipping oil of vitriol, unslacked lime, inflammable matches, or gunpowder, in a ship or vessel taking cargo for divers persons on freight, without delivering, at the time of shipment, a note in writing, expressing the nature and character of such merchandise, to the master, mate, officer, or person in charge of the lading of the ship or vessel, shall forfeit to the United States one thousand dollars.

This act shall not apply to the owner or owners of any canal-boat, barge, or lighter, or to any vessel of any description whatsoever, used in rivers or inland navigation.

APPROVED March 3, 1851.

EVIDENCE.

An Act in relation to the competency of Witnesses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the laws of the state in which the court shall be held shall be the rules of decision as to the competency of witnesses in the courts of the United States, in trials at common law, in equity, and Admiralty.

.
APPROVED July 16, 1862.

An Act authorizing the admission in Evidence of copies of certain Papers, Documents, and Entries.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That copies of all official papers and documents belonging to and filed or remaining in the office of any consul, vice-consul, or commercial agent of the United States, and of all official entries in the books or records of any such office, shall, when certified under the hand and official seal of the proper consul, vice-consul, or commercial agent, be admissible in evidence in all the courts of the United States.

APPROVED January 8, 1869.

PRACTICAL FORMS.

THE following precedents, with a very few exceptions, have been selected from the accumulated papers of my own practice. Names and dates are often changed, and the merely formal parts are reduced to a uniformity which did not exist in the original papers, but which was desirable in a body of precedents. In many instances, also, I have changed the phraseology, with a view to greater brevity and clearness. Subject to these remarks, they are the precedents of actual practice, prepared by myself and others.

In the first instance, the forms and proceedings in a suit in Admiralty will be given in consecutive chronological order, from the commencement of the suit to its final termination; and then, such other forms will be added as shall seem to be necessary.

Forms of proceedings in a suit *in rem*, against a ship and cargo, for salvage, with a suit against the same ship for a forfeiture, for being brought into a prohibited port:

No. 1. — LIBEL BY THE OWNER AND MASTER OF THE SAVING VESSEL, FOR THEMSELVES AND OTHERS, AGAINST THE SAVED VESSEL AND CARGO FOR SALVAGE.

DISTRICT COURT OF THE UNITED STATES OF AMERICA.

Southern District of New York:—

IN ADMIRALTY.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States in and for the Southern District of New York.

The libel of Peter Harmony, owner of the American brig *Merced* of New York, and of Eliphalet Kingsbury, master of the said brig, for themselves and all others entitled, against the ship *Waterloo*, her tackle, apparel, and furniture, and cargo, and against all persons intervening for their interest therein, in a cause of salvage, civil and maritime, alleges as follows:

First. That on the twenty-seventh day of August last past, the said Eliphalet Kingsbury being on a voyage, in the said brig *Merced*, from Havana, in the island of Cuba, to Cadiz, in Spain, discovered a ship dismasted and apparently deserted, whereupon he hauled up for and boarded her; that he found the said ship, which proved to be the British ship *Waterloo*, of London, with twelve feet of water in her hold, totally dismasted and entirely abandoned by her captain and crew; that he found no papers on board the said ship, but she had a full cargo of rum, sugar, and other West India produce on board.

Second. That the said Eliphalet Kingsbury thereupon took the said ship Waterloo in tow and made for the port of New York, where he arrived with the said ship on the twelfth day of September instant, the crew of the brig being almost worn out with fatigue in pumping out the said ship, and other work done on board of her, and they are entitled to reasonable share of said ship and cargo for the salvage thereof.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellants pray that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said ship Waterloo, her tackle, apparel, and furniture and cargo, and that all persons claiming any interest therein, may be cited to appear and answer upon oath, all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree to the libellants a reasonable and proper salvage, in proportion to the value of said vessel and cargo, and that the said ship, her tackle, apparel, and furniture, and cargo, may be condemned and sold to pay said salvage, with costs, charges, and expenses, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

Sworn, Sept. 16, 1829,

before me,

FRED. J. BETTS, Clerk.

ISAAC A. JOHNSON, Proctor.

E. C. BENEDICT, Advocate.

PETER HARMONY.

ELIPHALET KINGSBURY.

NO. 2. — STIPULATION FOR COSTS TO BE GIVEN BY THE LIBELLANTS ON FILING
THE FOREGOING LIBEL.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

Stipulation entered into pursuant to the Rules and Practice of this Court.

Whereas a libel was filed in this court, on the 16th day of September, 1829, by Peter Harmony and Eliphalet Kingsbury, against the ship Waterloo, her tackle, apparel, and furniture, and cargo, for the reasons and causes in the said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libellants; and the said libellants and George Jones, surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars;

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are bound, in the sum of two hundred and fifty dollars, conditioned that the libellants above

named shall pay all such costs as shall be awarded against them by this court, or in case of appeal, by the appellate court.

Taken and acknowledged, this
16th day of September, 1829,
before me,

FRED. J. BETTS, Clerk.

PETER HARMONY.
ELIPHALET KINGSBURY.
GEORGE JONES.

NO. 8. — JUSTIFICATION OF SURETY.

Southern District of New York, ss.

George Jones of the city of New York, merchant, party to the above stipulation, being duly sworn, deposes and says, that he resides at 21 New Street, and that he is a householder in the Southern District of New York, and is worth the sum of five hundred dollars over and above all his debts.

Sworn this 16th day of September,
1829, before me,

GEORGE JONES.

FRED. J. BETTS, Clerk.

NO. 4. — ATTACHMENT AND MONITION AGAINST A SHIP AND CARGO IN REM, ON
THE FOREGOING LIBEL.

Southern District of New York, ss.

The President of the United States of America to the Marshal of the Southern District of New York, Greeting:
Whereas a libel hath been filed in the District Court of the
[L. S.] United States for the Southern District of New York, on the
16th day of September, in the year of our Lord one thousand
eight hundred and twenty-nine, by Peter Harmony and others
against the ship Waterloo, her tackle, apparel, and furniture,

and cargo, in a cause of salvage civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., and cargo, may be cited in general and special, to answer the premises, and all proceedings being had that the said ship or vessel, her tackle, &c., and cargo, may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded, to attach the said ship or vessel, her tackle, &c., and cargo, and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the Southern District of New York, on the first Tuesday of October next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise

on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness, the Honorable Samuel R. Betts, Judge of the said court, at the city of New York, in the Southern District of New York, this 16th day of September, in the year of our Lord one thousand eight hundred and twenty-nine, and of our independence the fifty-sixth.

FRED. J. BETTS, Clerk.

ISAAC A. JOHNSON, Proctor for Libellant.

NO. 5. — NOTICE FOR PUBLICATION CONTAINING THE SUBSTANCE OF THE LIBEL.
UNITED STATES OF AMERICA.

Southern District of New York, ss.

Whereas a libel has been filed in the District Court of the United States for the Southern District of New York, on the sixteenth day of September, 1829, by Peter Harmony, owner, and Eliphalet Kingsbury, master of the brig *Merced*, libellants, against the ship *Waterloo*, her tackle, apparel, and furniture, and cargo, alleging, in substance, that, on the twenty-seventh day of August last, said Eliphalet Kingsbury, being on a voyage from Havana to Cadiz in the said brig *Merced*, discovered and boarded the British ship *Waterloo*, of London, with twelve feet of water in her hold, totally dismantled and entirely abandoned by her captain and crew; that he found no papers on board of her, but that she had a full cargo of rum, sugar, and other West India produce on board; that he thereupon took the said ship in tow, and brought her into the port of New York on the twelfth day of September instant, her crew being almost worn out with fatigue, and that they are entitled to a reasonable share of said ship and cargo for the salvage thereof. And praying process against said ship and cargo, and reasonable and proper salvage, and that the said ship, her tackle, apparel, and furniture, and cargo, may be condemned and sold to pay such salvage, with costs, charges, and expenses.

Now, therefore, in pursuance of the monition under the seal of the said court to me directed and delivered, I do hereby give public notice to all persons claiming the said ship, her tackle, apparel, and furniture, and cargo, or in any manner interested therein, that they be and appear before the said District Court to be held at the city of New York in and for the Southern District of New York, on the first Tuesday of October next, at eleven o'clock in the forenoon of that day (provided the same shall be a day of jurisdiction, otherwise, on the next day of jurisdiction thereafter), then and there to interpose their claims, and to make their allegations in that behalf.

Dated the 16th day of September, 1829,

THOMAS MORRIS, U. S. Marshal.

ISAAC A. JOHNSON, Proctor for Libellants.

No. 6. — THE MARSHAL'S RETURN TO THE FOREGOING WRIT.

In obedience to the within monition, I attached the vessel and cargo therein described, on the sixteenth day of September last, and I have given due notice to all persons claiming the same, that this court will, on the fifth day of October instant (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated October 5, 1829,

THOMAS MORRIS, U. S. Marshal.

No. 7. — PROCLAMATION ON THE RETURN OF PROCESS IN REM.

Hear ye! hear ye! Peter Harmony and Eliphalet Kingsbury against the ship Waterloo, her tackle, apparel, and furniture, and cargo. All persons who have any thing to say why the ship Waterloo, her tackle, apparel, and furniture, and cargo, should not be condemned and sold to answer the prayer of the libellants in this cause, come forward and make your allegations in that behalf.

No. 8. — ORDER OF THE COURT ON THE RETURN OF MESNE PROCESS IN REM.

The marshal having returned, upon the monition in this cause, that he had attached the said ship, her tackle, &c., and cargo, and had given due notice to all persons claiming the same, that this court would, on this day, proceed to the trial and condemnation thereof should no claim be interposed for the same: — On motion of Mr. Johnson, proctor for the libellants, proclamation was made for all persons having any thing to say why the said vessel and her cargo should not be condemned and sold to answer the prayer of the libellants, to appear; and on like motion, ordered that the defaults of all persons who have not already filed their claims be entered.

No. 9. — CLAIM BY THE AGENTS OF FOREIGN UNDERWRITERS TO VESSEL AND CARGO, IN CASE OF SALVAGE OF A FOREIGN SHIP.

United States District Court for the Southern District of New York.

IN ADMIRALTY.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The answer and claim of Henry Barclay and George Barclay, of the city of New York, merchants intervening for the interest of their principals, to the libel of Peter Harmony and Eliphalet Kingsbury, alleges as follows:

First. That these defendants admit, that on the twenty-seventh day of August last past, the said Eliphalet Kingsbury was the master of the brig Merced, of New York, and that he was then in the said brig on a voyage from

Havana, in Cuba, to Cadiz, in Spain; but whether he then discovered a ship dismasted and apparently deserted, and whether he then hauled up for her and boarded her, and whether he found the said ship with twelve feet water in her hold, and totally dismasted and entirely abandoned by her captain and crew, and whether the said ship proved to be the British ship Waterloo, of London, and whether the said Eliphalet Kingsbury found any papers in the said ship or not, these respondents know not, and therefore can neither admit nor deny, but leave the same to be proved by the said libellant.

Second. That they admit it to be true, that the said Eliphalet Kingsbury arrived at the port of New York, on the twelfth day of September, in the year of our Lord one thousand eight hundred and twenty nine, and that he had the ship Waterloo, of London, in tow, and that the said ship had a full cargo of rum, sugar, and other West Indian produce on board, and that said ship, when so brought in, was dismasted and disabled, but whether the crew of the said brig Merced were or were not almost worn out with fatigue, in pumping out the said ship, and with other work done on board of her, these respondents know not, and therefore leave the same to be proved by the said libellants.

Third. That, by a commission, dated the second day of July, in the year of our Lord one thousand eight hundred and seventeen, and signed by Joseph Maryat, chairman, and John Bennet, junior, secretary of the committee for managing the affairs of the underwriters, at Lloyd's, in London, in that part of the United Kingdom of Great Britain and Ireland called England, these respondents were appointed to act as agents for the subscribers at Lloyd's, at the port of New York, and Custom-house district, subject to the instructions in the said commission mentioned: and that, by the said instructions, they are, amongst other things, directed, "When salvage or remuneration is claimed, for assistance rendered to vessels, to attend the meeting of the commissioners, magistrates or other persons legally authorized to determine the amount, in order to rebut any exaggerated statements on the part of the salvors, by the evidence of the master and crew:" and they are likewise authorized and empowered by the said commission to attend to the interests of the subscribers to Lloyd's in general; as by the said commission now in the possession of these respondents, will more fully and at large appear, and to which, for greater certainty, these respondents pray leave to refer.

Fourth. That they are likewise the agents for the underwriters at Liverpool, in that part of the United Kingdom of Great Britain and Ireland called England; and for the underwriters in Glasgow, in that part of the United Kingdom of Great Britain and Ireland, called Scotland, under two several commissions with the like authority and instructions as mentioned in the said commissions, from the underwriters, at Lloyd's, in London, aforesaid, as by the said several commissions from the underwriters at Liverpool, and from the underwriters at Glasgow, reference being thereunto had, will more fully and at large appear, and to which, for greater certainty, these respondents pray leave to refer.

Fifth. That they have no doubt that the said ship Waterloo, or her cargo, or both, or some part thereof, were or was insured at some or one of the said places, by some or all of the underwriters therein, and they have no doubt but that the said vessel, or her cargo, or both, or some part thereof, have or hath been abandoned by the persons interested therein, to the said underwriters, or some or one of them; and that the right of ownership in the said ship and cargo, or both, or some part thereof, hath accrued to the said underwriters or some, or one of them; but these respondents cannot speak on this point with absolute certainty, but only to the best of their belief, inasmuch as a sufficient time hath not elapsed since the twelfth day of September, eighteen hundred and twenty-nine, when the said ship was as aforesaid brought into the said port of New York, to communicate the circumstance to the said several insurers or any of them, and to hear from the said several underwriters, or any of them, on the same subject.

Sixth. That immediately after the said vessel and her cargo were brought into the said port of New York, as aforesaid, they wrote to the said underwriters at London, informing them of the circumstances of the case, as far as was known to these respondents, and requesting information from the said underwriters, of their rights and interests in and to the said vessel and her cargo, or any part thereof. That, on the sixteenth day of September, in the year of our Lord 1829, these respondents received from Thomas Morris, Esquire, marshal of the United States for this district, a request that these respondents would enter the cargo of the said ship at the custom-house at New York, and would become responsible for the payment of the duties that might be payable to the United States on the cargo of the said ship. That, in pursuance thereof, these respondents entered the said cargo, and secured the duties upon the same by bond, conditioned for the payment of the duties to be ascertained on the said cargo. That said duties have since been ascertained, and amount to twenty-one thousand six hundred and ninety-eight dollars and ninety-one cents, which these respondents have thereby become liable to pay; also, certain foreign duties chargeable on said ship and cargo, besides custom-house fees and expenses paid by these respondents. And therefore these respondents, on behalf of the said several underwriters, claim the said vessel and cargo, and pray that out of the proceeds of the sale of the said vessel and cargo, if sold, this court may, in the first place, order the said amount of duties secured by these respondents, and the said foreign duties and fees, to be paid to these respondents, and that this Honorable Court, after hearing proof and decreeing a reasonable salvage, should it seem proper so to do, may further decree, that the rest, residue, and remainder of the said ship and her cargo, or of the proceeds thereof, should the same be decreed to be sold, after payment of said amount of duties and fees, and of the salvage, may be retained in the custody of this Honorable Court, for such reasonable time as may seem proper; wherein the rights and interests of the above-mentioned underwriters may be ascertained; and that this Honorable Court may further decree, that the said ship and cargo,

or the proceeds thereof, or a part thereof, as proof may be made of interest, may be delivered up to these respondents, upon due proof being made in manner and form as this Honorable Court may direct, that the said underwriters or any of them have an interest in, and a right to receive the same or any part thereof.

GEORGE BARCLAY.

Sworn this 5th day of October, 1829.
before me,

FRED. J. BETTS, Clerk.

ROBINSON & BETTS, Proctors.
BEVERLY ROBINSON, Advocate.

NO. 10. — STIPULATION FOR COSTS TO BE GIVEN BY THE CLAIMANT ON PUTTING
IN A CLAIM.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

Stipulation entered into pursuant to the Rules and Practice of this Court.

Whereas a libel was filed in this court, on the sixteenth day of September, in the year of our Lord one thousand eight hundred and twenty-nine, by Peter Harmony, and Eliphalet Kingsbury, against the ship Waterloo, her tackle, apparel, and furniture, and cargo, for the reasons and causes in the said libel mentioned, and praying that the same may be condemned, and sold, to answer the prayer of the libellants;

And whereas, also, a claim has been filed in said cause by Henry Barclay and George Barclay, and the said claimants and James Jackson, surety, the parties hereto, hereby consenting that in case of default or contumacy on the part of the claimants or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are hereby bound, in the sum of two hundred and fifty dollars, conditioned that the claimants above named, shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

Taken and acknowledged, this 5th day
of October, 1829, before me,
FRED. J. BETTS, Clerk.

HENRY BARCLAY.
GEORGE BARCLAY.
JAMES JACKSON.

No. 11.—JUSTIFICATION OF SURETY,

Southern District of New York, ss.

James Jackson, of the city of Brooklyn, merchant, party to the above stipulation, being duly sworn, that he resides at No. 11 Fulton Street, in the city of Brooklyn, in the Southern District of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JAMES JACKSON.

Sworn to, this 5th day of October,
1829, before me.

FRED. J. BETTS, Clerk.

No. 12.—CLAIM BY A FOREIGN CONSUL FOR UNKNOWN OWNERS IN A CASE OF
SALVAGE OF A SHIP AND CARGO OF HIS NATION.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In Admiralty.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The claim and answer of James C. Buchanan, His Britannic Majesty's vice-consul in and for the city and State of New York and Eastern New Jersey, intervening for the interest of the owner or owners of the British ship *Waterloo* and her cargo, alleges as follows:

First. That the said ship *Waterloo* is, as alleged in the said libel, and as the said claimant believes to be true, British property; and he believes the cargo of merchandise alleged to have been found on board of the said ship, to be in like manner British property:—And as such vice-consul, and in behalf of such British owners as may be entitled to the same, he claims the same as their property.

Second. That as to the facts alleged and set forth in the said libel, the said claimant neither admits nor denies the same, but leaves the same to be duly proved to the satisfaction of this court.

And the said claimant prays, on behalf of the owner or owners of the said ship *Waterloo*, and her aforesaid cargo, or of any other person or persons whom the same may concern, that the said ship, her tackle, apparel, and furniture, and her cargo, aforesaid, may be sold, and out of the proceeds of the sale thereof, after the payment of all costs and charges incurred, that the said libellants, having duly proved as aforesaid the facts in their said libel set forth, may be allowed and paid such rate and amount of salvage, for their labor and exertions in bringing the said ship and her aforesaid cargo into this port, as by this court shall be deemed just and reasonable under the circumstances of the case, and that the surplus of the said proceeds, after payment of such salvage as aforesaid, may be adjudged and decreed to be paid to the said claimant, on behalf

of the owner or owners of the said ship and her aforesaid cargo, or whomsoever the same may concern; or that such other order or decree may be made in relation to the same as this court shall deem proper.

J. C. BUCHANAN, H. M. Vice-Consul.

H. & E. WILKES, Procts. and Ads. for Claimants.

Sworn this 5th day of October,

1829, before me,

FRED. J. BETTS, Clerk.

(*Stipulation for Costs, as ante, No. 10, page 504.*)

NO. 13.—CLAIM BY THE U. S. ATTORNEY ON BEHALF OF THE UNITED STATES FOR FORFEITURE AND FOR DUTIES IN A CASE OF SALVAGE OF A FOREIGN SHIP AND CARGO.

District Court of the United States of America for the Southern District of New York.

IN ADMIRALTY.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The claim of James A. Hamilton, District Attorney of the United States of America for the Southern District of New York, intervening for the interest of the said United States, in the said ship called the *Waterloo*, and her cargo, and the answer of the said attorney, on behalf of the said United States, to the libel of the said Peter Harmony and Eliphalet Kingsbury, alleges as follows:

First. That the said James A. Hamilton, District Attorney of the United States of America for the Southern District of New York, claims the said ship *Waterloo*, together with the cargo of the said ship laden on board of her, as stated and set forth in the said libel, as forfeited to the use of the said United States for the cause following—to wit, that the said ship *Waterloo* is a ship or vessel owned wholly or in part by a subject or subjects of his Britannic majesty, and said ship or vessel, after the thirtieth day of September, one thousand eight hundred and eighteen, did come and arrive from a port or place in a colony or territory of his Britannic majesty, to wit, from the port of Annatto Bay, in the island of Jamaica, in the West Indies, which said port is and was, at the time the said ship sailed from thence by the ordinary laws of navigation and trade, closed against vessels owned by citizens of the United States, and that the ports of the United States were, and are closed against the said ship or vessel called the *Waterloo*, which said ship or vessel being so excluded from the ports of the United States, did enter the same, to wit, the port of New York, in the Southern District of New York aforesaid, in violation of the acts of the Congress of the United States, in such cases made and pro-

vided. By force and virtue of the acts in such case made and provided, the said ship or vessel, her tackle, apparel, and furniture, together with the cargo on board of the said ship or vessel, became and are forfeited to the use of the said United States,

Second. That if this Honorable Court shall adjudge and decree that the said ship or vessel, with her cargo, or either, is not forfeited to the use of the United States, for the cause aforesaid, the said ship or vessel, together with the cargo on board of her, is liable to the payment of the duties imposed by the laws of the United States, on the arrival of the said ship or vessel within the United States, and on the importation of the cargo of merchandise on board of her, to wit, rum and sugar of the growth, produce, and manufacture of some foreign country, and which are subject to the payment of duties to the United States, on being brought or imported into the United States; wherefore the said attorney, on behalf of the said United States, prays this Honorable Court to decree the payment of the said duties to the United States according to law, if the said ship and the cargo on board of her as aforesaid, shall be adjudged not to be forfeited to the use of the said United States for the cause aforesaid, and that he may have his costs, &c. And the said attorney further insists upon and submits to this Honorable Court the rights and interest of the said United States of America, in the premises, whatever they may be, to be decreed to them.

JAMES A. HAMILTON,

Attorney United States, &c.

The United States does not give a stipulation for costs.

NO. 14.—REPLICATION TO CLAIM AND ANSWER.

To the Honorable Samuel R. Betts, Judge, &c.

The replication of Peter Harmony and Eliphalet Kingsbury, libellants, to the claim and answer of James Buchanan, claimant and respondent, alleges that they will aver, maintain, and prove their libel to be true, certain, and sufficient; and that the said claim and answer of the said claimant and respondent is uncertain, untrue, and insufficient, and they humbly pray, as in and by their libel they have already prayed.

ISAAC A. JOHNSON,

Proctor for Libellants.

Special Motion—for Interlocutory Sale.

No. 15.—AFFIDAVIT OF CIRCUMSTANCES TO MOVE FOR SALE OF SHIP AND CARGO.

District Court of the United States for the Southern District of New York.

PETER HARMONY and ELIPHALET KINGSBURY, <i>vs.</i> THE SHIP WATERLOO, &c., and CARGO.	}
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Southern District of New York, ss.

Peter Harmony, one of the libellants in this cause, being sworn, says — That the ship Waterloo is now at the wharf in the port of New York, subject to large and increasing expense for wharfage, keeper's fees, and other expenses. That she is in a damaged condition, and requires care and repairs. That a large portion of her cargo is perishable, being sugar, and in a wet and damaged condition. That the only claims that have been interposed are those of the United States, for a forfeiture and for duties, of the British Consul, for the probable rights of unknown British owners, and of the agents of the underwriters, at Lloyd's, for the contingent rights of such underwriters. That, in his opinion, the interests of all parties concerned will be promoted by a speedy judicial sale of said ship, her tackle, apparel, and furniture, and cargo, the proceeds of such sale to be brought into court for the benefit of whom it may concern, subject to the further order of the court.

Sworn Oct. 7th, 1829, before me,
FRED. J. BETTS, Clerk.

‘ PETER HARMONY.

No. 16.— NOTICE OF MOTION ON THE FOREGOING AFFIDAVIT.

District Court of the U. S. — Southern District of N. Y.

PETER HARMONY and ELIPHALET KINGSBURY, <i>vs.</i> THE SHIP WATERLOO and CARGO.	}
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GENTLEMEN, — You will please take notice that, on the libel and claims in this cause, and on an affidavit, of which the foregoing is a copy, a motion will be made before his Honor, Samuel R. Betts, Judge of this court, at his chambers, No. 5 Pine Street, in the city of New York, on Thursday, the 8th day of October, instant at 11 o'clock in the forenoon of that day, for an order, that the ship Waterloo and her cargo above mentioned, be sold under the direction of the marshal, and the proceeds brought into court.

Yours, &c.

ISAAC A. JOHNSON, Proctor for Libellants.

New York, 7th Oct. 1829.

To JAMES A. HAMILTON, Esq., Proctor for the U. S.

ROBINSON & BETTS, Esqrs., Proctors for the Underwriters, &c.

H. & E. WILKES, Esqrs., Proctors for the Owners.

No. 17. — PROOF OF SERVICE — ADMISSION.

We admit due service of the within notice.

Oct. 7th, 1829.

JAMES A. HAMILTON, District Attorney.

ROBINSON & BETTS, Pts. for H. Barclay & Geo. Barclay.

H. & E. WILKES, for British Consul.

OR THIS:

AFFIDAVIT OF SERVICE OF PROCESS.

Southern District of New York, ss.

John J. Young, of the city of New York, student at law, being duly sworn, says, that on the seventh day of October, instant, he served copies of the foregoing affidavit and notice on James A. Hamilton, Robinson & Betts, and H. & E. Wilkes, Esquires, proctors for the claimants in this cause, by leaving the same in their respective offices, with their clerks.

Sworn Oct. 7th, 1829,
before me,

JOHN J. YOUNG.

E. C. BENEDICT, U. S. Commissioner.

No. 18. — ORDER FOR INTERLOCUTORY SALE OF A SHIP AND CARGO.

PETER HARMONY and ELIPHALET KINGSBURY	}
vs.	
THE SHIP WATERLOO, HER TACKLE, &c., and CARGO.	

On reading and filing the affidavit of Peter Harmony, and the admission of the proctors for the respective claimants, and on motion of Mr. Johnson, proctor for the libellants, It is ordered, that the ship Waterloo, her tackle, apparel, and furniture, and cargo, be sold by the marshal, on six days' public notice, and that a *venditioni exponas* issue accordingly; and it is further ordered, that the marshal bring the proceeds of such sale into this court, and pay the same to the clerk thereof.

No. 19. — VENDITIONI EXPONAS.

Southern District of New York, ss.

The President of the United States of America, to the Marshal of the Southern District of New York, Greeting: Whereas a libel was filed in the District Court of the United States for the Southern District of New York, on the sixteenth day of September, in the year of our Lord one thousand eight hundred and twenty-nine, by Peter Harmony and Eliphalet Kingsbury, against the ship Waterloo, her tackle, apparel, furniture and cargo, and praying that the same may be condemned

and sold to answer the prayer of the said libellants. And whereas, the said ship and cargo have been attached by the process issued out of the said district court, in pursuance of the said libel, and are now in custody by virtue thereof; and such proceedings have been thereupon had, that by the interlocutory sentence and decree of the said court, in this cause made and pronounced, on the seventh day of November, one thousand eight hundred and twenty-nine, the said ship, her tackle, apparel, and furniture, and cargo, were ordered to be sold by you the said marshal, after giving six days' notice of such sale, according to law. Therefore you, the said marshal, are hereby commanded to cause the said ship Waterloo, her tackle, apparel, and furniture, and cargo, so ordered to be sold, to be sold in manner and form, upon the notice, and at the time and place by law required, and that you have the moneys arising from such sale in said court, at the city of New York, on the third Tuesday of November next, and that you then pay the same to the clerk of the court; and have you also then and there this writ.

Witness, the Honorable Samuel R. Betts, Judge of the said court, at the city of New York, in the Southern District of New York, this seventh day of November, in the year of our Lord one thousand eight hundred and twenty-nine, and of our independence the fifty-third.

FRED. J. BETTS, Clerk.

No. 20. — THE RETURN OF THE MARSHAL.

In obedience to the above precept, I have sold the ship Waterloo, her tackle, apparel, and furniture, and cargo, and such sale amounts to thirty-nine thousand and two hundred and sixty-two dollars and ninety cents, which sum I have paid to the clerk of this court as I am above commanded.

Dated this 22d day of February, 1830.

THOMAS MORRIS, U. S. Marshal.

No. 21. — THE CLERK'S RECEIPT TO THE MARSHAL.

United States District Court.

PETER HARMONY, &c. }
 vs. }
 THE SHIP WATERLOO, &c. }

NEW YORK, February, 22, 1830.

Received from Thomas Morris, Esq., marshal, thirty-nine thousand two hundred and sixty-two dollars and ninety cents, the amount of the proceeds of the said ship and cargo, sold under the *venditioni exponas* in this cause.

FRED. J. BETTS, District Clerk.

\$39,262.90.

Special Motion.

NO. 22.—APPLICATION BY THE MARSHAL FOR LEAVE TO PAY THE DUTIES ON CARGO SOLD BY HIM.

District Court of the U. S. for the Southern District of New York.

PETER HARMONY, &c. }
vs.
 THE SHIP WATERLOO, &c. }

GENTLEMEN,—I shall apply to the court in this cause, on Wednesday, the eleventh day of November instant, for leave to pay to the collector of the port the duties on the cargo, out of the proceeds of the sale thereof.

November 7th, 1829.

Yours, &c.,

THOMAS MORRIS, Marshal.

To ISAAC A. JOHNSON, Esq., Proctor for Libellant.

JAMES A. HAMILTON.

ROBINSON & BETTS.

H. & E. WILKES, Proctors for Claimants.

Due service admitted.

ISAAC A. JOHNSON.

JAMES A. HAMILTON.

ROBINSON & BETTS.

H. & E. WILKES.

NO. 23. — ORDER ON THE FOREGOING APPLICATION.

It being made to appear to the court that on entering the said ship and cargo, the duties on said cargo were secured to be paid, and application being now made on the part of the marshal of the district, for an order that he pay over to the collector of the port the amount of duties so secured to be paid, and due notice having been given to the respective parties before the court, and no opposition being made to the application, it is ordered, that the marshal forthwith pay to the said collector the amount of such duties, and that on filing the proper vouchers of such payment, the said vouchers be received as part of the return to the *venditioni exponas* issued in this cause.

NO. 24. — DEPOSITIONS DE BENE ESSE. — AFFIDAVIT OF NECESSITY.

DISTRICT COURT OF THE UNITED STATES,

Southern District of New York.

PETER HARMONY and ELIPHALET }
 KINGSBURY
vs.
 THE SHIP WATERLOO, HER TACKLE, }
 &c., and HER CARGO. }

Southern District of New York, ss.

Eliphalet Kingsbury, one of the libellants above named, being sworn, saith,

that he was master of the brig *Merced*, of New York, on her late voyage from Havana to Cadiz, in the course of which she fell in with the above-mentioned ship *Waterloo* in distress, and the deponent further saith, that William N. Winnett was first mate, and Caleb L. Upshur was the second mate of the said brig, upon the said voyage, and that William Jackson, James Porter, William Dyer, John Stivers, James Jamison, William Grant, Joseph Domingues, and Nicholas Yanino, composed the residue of the company of the said brig, and Felix Martinez, who was working his passage in said brig, on the aforesaid voyage. The deponent further saith, that the said William N. Winnett, Caleb L. Upshur, William Jackson, James Porter, William Dyer, John Stivers, James Jamison, William Grant, Felix Martinez, Joseph Domingues, and Nicholas Yanino, are witnesses whose testimony is necessary for the libellants in the above cause, and that the said witnesses are all seafaring men, and are bound on a voyage to sea, as he is informed and believes.

E. KINGSBURY.

Sworn, October 7th, 1829,

before me,

E. C. BENEDICT, U. S. Commissioner, &c.

NO. 25. — NOTICE FROM THE MAGISTRATE TO THE ADVERSE PARTY OF TAK-
ING DEPOSITIONS DE BENE ESSE.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PETER HARMONY and ELIPHALET
KINGSBURY

vs.

THE SHIP *WATERLOO*, HER TACKLE,
APPAREL, and FURNITURE, and CARGO.

} Notice.

Please to take notice, that William N. Winnett, Caleb L. Upshur, James Porter, William Dyer, John Stevens, James Jamison, and William Grant, witnesses, whose testimony is necessary in this cause, and who are bound on a voyage to sea, will be examined (*de bene esse*) on the part of the libellants in this cause, before me, a Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, at my office, No. 15 Pine Street, in the city of New York, on the eighth day of October instant, at nine o'clock in the forenoon, at which time and place you are hereby notified to be present, and put interrogatories, if you shall think fit.

Dated New York, the 7th day of October, A.D. 1829.

Yours, &c.,

E. C. BENEDICT, U. S. Commissioner.

TO JAMES A. HAMILTON, Esq.,

ROBINSON & BETTS, Esqrs.,

H. & E. WILKES, Esqrs.,

Proctors for the Claimants.

No. 26.—PROOF OF SERVICE.

Southern District of New York, ss.

John J. Young, of the said city, student-at-law, being duly sworn, deposeth and saith — That on the seventh day of October, instant, he served a copy of the annexed notice on James A. Hamilton, Esq., proctor for the United States, by delivering the same to a man attending in the office of the said James A. Hamilton; that on the same day he served a copy of the said notice on Robinson & Betts, Esqrs., proctors for the claimants Barclay, by delivering the same to a clerk in the office of the said Robinson & Betts; and that on the same day he served a copy of the said notice on H. & E. Wilkes, Esqrs., proctors for the claimant Buchanan, by delivering the same to E. Wilkes, Esq., personally, and further he saith not.

JOHN J. YOUNG.

Sworn, this eighth day of October,

1829, before me,

E. C. BENEDICT, U. S. Commissioner, &c.

No. 27. — SUBPENA TO TESTIFY BEFORE A COMMISSIONER.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To William N. Winnett, Caleb L. Upshur, William Jackson, James Porter, William Dyer, John Stevens, James Jamison, William Grant, Felix Martinez, Joseph Domingues, and

[L. S.]

Nicholas Yanino, Greeting: We command you, that all and singular business and excuses being laid aside, you and each of you be and appear in your proper persons, before Erastus C. Benedict, a commissioner appointed by the Circuit Court

of the United States of America for the Southern District of New York, at his office, No. 15 Pine Street, in the city of New York, in the said Southern District of New York, on the eighth day of October, one thousand eight hundred and twenty-nine, at nine o'clock in the forenoon of the same day, to testify all and singular what you and each of you may know in a certain cause now depending undetermined in the District Court of the United States, for the Southern District of New York, wherein Peter Harmony and Eliphalet Kingsbury are libellants against the ship Waterloo, her tackle, &c., and cargo, on the part of the libellants. And this you or either of you are not to omit, under the penalty upon each and every of you of two hundred and fifty dollars.

Witness, Samuel R. Betts, Esquire, Judge of the District Court of the United States, at the city of New York, the seventh day of October, in the year of our Lord one thousand eight hundred and twenty-nine.

FRED. J. BETTS, Clerk.

ISAAC A. JOHNSON, Proctor.

No. 28.— SUBPŒNA TICKET.

By virtue of a writ of subpœna, to you directed and herewith shown, you are commanded, and firmly enjoined, that, laying all other matters aside, and notwithstanding any excuse, you be and appear in your proper person, before Erastus C. Benedict, a Commissioner duly appointed by the Circuit Court of the United States of America, for the Southern District of New York, at his office, No. 15 Pine Street, in the city of New York, on the eighth day of October, inst., at nine o'clock in the forenoon of the same day, to testify all and every thing which you may know in a certain cause now depending in the District Court of the United States for the Southern District of New York, wherein Peter Harmony and Eliphalet Kingsbury are libellants against the ship *Waterloo*, her tackle, &c., and cargo, on the part of the libellants. And this you are not to omit, under the penalty of two hundred and fifty dollars.

Dated this seventh day of October, 1829.

By the Court.

ISAAC A. JOHNSON.

Proctor for Libellants.

TO WILLIAM F. WINNETT.

 No. 29.— DEPOSITION.

UNITED STATES OF AMERICA.

Southern District of New York, City, County, and State of New York, ss.

On this eighth day of October, in the year of our Lord one thousand eight hundred and twenty-nine, before me, Erastus C. Benedict, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, under and by virtue of the act of Congress, "for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February twentieth, 1812, personally appeared at my office, in the city of New York, in the said Southern District of New York, William N. Winnett, Caleb L. Upshur, William Jackson, James Porter, William Dyer, John Stevens, James Jamison, and William Grant, witnesses on the part of the libellants in a certain civil cause of admiralty and maritime jurisdiction, now depending and undetermined in the District Court of the United States, for the Southern District of New York, wherein Peter Harmony and Eliphalet Kingsbury are libellants against the ship *Waterloo*, her tackle, apparel, and furniture, and cargo, and James Buchanan, Henry Barclay, and George Barclay, and the United States of America, are claimants. And the said William N. Winnett having been by me first cautioned and sworn to testify the whole truth, did thereupon depose and say — That he is twenty-five years old; that he was chief mate of the brig *Merced*, on her late voyage from Havana to New York, and that Eliphalet Kingsbury was master of said brig; that the said brig is of about two hundred and sixty tons

burthen. The said brig sailed from Havana on the nineteenth day of August last, bound to Cadiz, as he supposes, with a cargo of sugar, cochineal, and segars; that on the twenty-seventh day of August last, about half-past two in the afternoon (sea time), in latitude $34^{\circ} 4' N.$, longitude $75^{\circ} 15' W.$, they fell in with the wreck of a ship which had the words "Waterloo of London" on her stern; that deponent, with four men from brig Merced, boarded said wreck with the boat of the Merced. The main-mast and the mizzen-mast were carried away by the board; that at that time the captain of the brig Orion and some of his men were on board, and the brig Orion close by; that the captain of the Orion represented himself to be the captain of the brig Orion of Baltimore; that the said master and men of the Orion appeared to be taking from the wreck whatever they thought of use to them, and easily movable. The captain of the Orion represented to deponent that the wreck was in a sinking state, and that it was sickly below; that his men could not remain below but a few minutes at a time. The captain of the Orion said that he did not intend taking out the cargo, as he supposed the ship would sink before morning, and he requested the deponent to give his compliments to Captain Kingsbury, and tell him that the vessel was in a sinking state, and that he (the captain of the Orion) would not take her in tow, because she would sink, and no one could live on board of her. Deponent went into the cabin of the wreck, but could not remain more than a few moments, because of the offensive smell, which was so offensive that he thinks a man could not live below deck; that even the rats were found dead below. That, while on board the wreck, a cargo book was thrown up out of the cabin by one of the Orion's crew, and deponent picked it up as a prize, and put it in his hat. That none of the crew of the Waterloo were then on board of her, nor was any person there except the persons from the Orion and the Merced; that deponent remained on board the Waterloo about fifteen minutes, when he returned to the Merced with the said cargo book, which he delivered to Captain Kingsbury, together with the message from the captain of the Orion to Captain Kingsbury, and Captain Kingsbury thereupon went on board the Waterloo, and remained there about three-quarters of an hour, and then returned to the Merced; that the Merced remained about the wreck all that night. The next morning the brig Orion was not in sight, and her captain and men had abandoned the wreck, and the weather in the morning was very squally, and the Merced was under double-reefed topsails. That in the morning the captain declared his intention of having the wreck again boarded, and thereupon called the brig's crew aft and stated to them that he believed the Waterloo and her cargo were of much value, and asked them if they were willing to obey his orders on board the wreck as well as on board the brig, and to assist in taking the wreck into some port, and they all expressed such willingness. And thereupon deponent, with four men of the Merced's crew, boarded the wreck, the sea being at that time tremendous rough — this was about eight o'clock in the morning. That, upon getting on board, he sounded the pumps,

and found about twelve feet of water in the hold ; that, after sounding the pumps, the next thing that was done was to get all the small lines that could be found on board the wreck, to take on board the Merced, to make a hauling line to draw the hawser from the Merced to the wreck. During that day the pumps were manned, and kept going, and during the whole time the wreck was so much by the head that the sea was up to her hawser holes, and none of the water pumped run out of the scuppers during the first day, but the same ran out of the hawser holes. That during that day they cut away all the rigging and spars that seemed to impede her. That the loss of the main-mast and mizzen-mast were evidently the effect of a heavy gale. That all the rigging on the larboard side had been cut away, square up to the bulwarks ; the vessel evidently having been on her beam ends. There were no boats belonging to the wreck, and the davits were carried away. The guard irons had been torn from the channels, and the chain bolts were badly wrenched, so much so as to cause her to leak badly. One of the ring bolts on deck had been torn out, and the camboose was entirely destroyed, and there were no cables on board. The bulwarks and rails were stove in on both sides, and were a complete wreck. The starboard side was much injured. The vessel itself was a complete wreck. That she appeared to have been thrown on her beam ends on the starboard side. That when deponent went on board in the morning she had a list to port. The rigging was hanging to the chain bolts on the starboard side, and the spars were lying about the deck ; the main top-mast breast back stay bolts and the top gallant back stay bolts torn out by the weight of the rigging. That they had great difficulty in getting the wreck in tow of the Merced. She was attached to the Merced by a hawser from the stern of the Merced to the ship's windlass, and also fastened to the windlass bits of the brig. The sea was running high at the time of making her fast ; several attempts were made to fasten her before they succeeded. This was attended with danger as well as difficulty, on account of the sea. They were obliged to get small lines from the ship and fasten them to the hawser. It took about two and a half or three hours to accomplish getting the wreck in tow ; the wind during all this time was fresh, and they were employed in a boat of the Merced, with considerable danger. In a day or two afterwards they attached the wreck by means of another hawser. That afterwards, during the time of bringing in said vessel, the crew of the Merced were constantly employed in pumping by turns. About eight days after taking her in tow, one of the pumps became choked, and but one could thereafter be used ; the crew, by constant pumping, became entirely exhausted. The men relieved each other at the pumps, day and night, every half hour, till they took a pilot. They were so much exhausted that they were obliged to sit down at the pumps, and have field beds of old canvas alongside of the pumps to lie down on. That generally, while they had the wreck in tow, the weather was bad and the sea very high. The vessel labored and strained much. About the third of September they experienced a heavy gale, which

threw the Waterloo on her beam ends, and caused her to leak to an alarming extent, and in order to right her they cut away the foremast, and the rigging attached to it; cut away the starboard anchor, and cleared the decks of every thing movable, and succeeded, with much trouble, in righting her. Previous to her being thrown on her beam ends, as last aforesaid, the water in her hold had been reduced to about three feet; shortly afterwards the leak had increased so much that she had seven feet of water in her hold. That they then feared she would sink, and wore ship, and got the low side to the wind. That the apprehensions of the men were so great that they all got into the jolly boat to save their lives, and begged the deponent, for God's sake, to get in too; deponent, however, persuaded them to return on board the ship. That on or about the fifth of September they encountered a somewhat more severe gale, which knocked the ship again on her beam ends. She lay so low in the sea that the water came in on her poop deck, and the leak gained three feet in one hour while she lay thus. They finally succeeded in righting her, with much difficulty. The sea made a complete breach over her while she lay thus. That all the Merced's crew were then on board the Waterloo, except the captain, the cook and steward, and two men, who were invalids. That so few men were left on board the Merced that it took about twelve hours to reduce her to her proper sails. Deponent saw Captain Kingsbury on the topsail and lower yards reefing and furling sails himself. The gale abated in about twenty-four hours, during which time the wreck labored and strained very much, and the leak increased in spite of their exertions, making the situation of all on board very dangerous. They finally arrived off Sandy Hook, September the eleventh, and took a pilot on board, and arrived at the quarantine ground on the twelfth of September. That during all the time while on board the wreck, they were in constant danger of sinking, and suffering every kind of privation. The pumps were kept constantly going, and they had very little hope of bringing the vessel in. They were constantly engaged in stopping leaks and making her as tight as possible. They could not at any time carry any sail on the Waterloo. When they took possession of her she drew about nineteen and a half feet at the stern. She appears to be a ship of four or five hundred tons. The cargo has been discharged since her arrival, and consisted of sugar, rum, coffee, lance-wood and arrow-root. Deponent verily believes that the wreck would have sunk in eight hours from the time the Merced took her had she been left to herself. The crew of the Merced, including the captain and one man who worked his passage, consisted of twelve persons, the said man who worked his passage aided in saving the vessel as much as the other men. Two or three of the men, from the excessive labor, had their feet swelled and were otherwise injured, and deponent verily believes that all the crew of the Merced were injured in health by their exertions in saving the Waterloo. They were constantly on deck, and never slept below while the Waterloo was in tow. They were frequently in danger of being swept from the deck by the sea breaking over them. That during the time

that the *Waterloo* was in tow, Captain Kingsbury exerted himself in navigating the *Merced*, doing the duty of a man before the mast in addition to his own duties. That the brig *Merced* was, in deponent's opinion, worth about eighteen thousand dollars. The brig *Merced* was not chafed, or strained, or hurt at all, by taking the *Waterloo* in tow, but was frequently in a dangerous situation. That it was a perilous undertaking for so small a vessel as the *Merced* to take such a wreck in tow.

Being cross examined on the part of the claimants, Barclay, he says — That they were on the usual course to Cadiz, and were running with the Gulf Stream as usual, when they fell in with the *Waterloo*. That deponent knew of no intention, on the part of the captain, to stop at New York, or any other port. That they were on the same course which they would have been, if going to New York, or any part of Europe. The captain and crew of the *Orion* left the *Waterloo* about sunset, to return to the *Orion*. That deponent discovered the next morning after they took possession of the *Waterloo*, that she floated lighter in the water, and that the pumping had reduced the water in her hold. That, on the day on which they took possession of the wreck, the deponent, after having cut away what would impede the *Waterloo*, set about looking for the leaks, and endeavored to stop them. The leaks were principally on the starboard side, in the wake of the main and mizzen channels. The leaks were stopped from the outside, by slinging, in a bowline knot. The hatches were left open for four or five days to purify the air, and thus to enable deponent to stay below a few minutes at a time.

[Examination closed for this day; adjourned till to-morrow, October ninth, at nine o'clock, A.M.]

Oct. 12th, 1829. — The cross examination of the deponent, William N. Winnett, being resumed by the proctor for the claimant, Barclay, he says — For two or three days previous to falling in with the *Waterloo*, they had strong symptoms of a very heavy gale. Deponent kept the log. In the morning of the day on which they fell in with the *Waterloo*, there was a moderate breeze and pleasant weather. Observation was taken that day; they were in the Gulf Stream when they fell in with the wreck. The winds which they encountered, while bringing in the *Waterloo*, were principally head winds and blowing weather. The men had no specific sickness on their arrival, except their swelled hands and feet, and the consequences of their fatigue; their eyes were sore from want of sleep. Deponent does not know that he was able to go on in the *Merced* and perform his duty, but he was not disposed to go on in her, had he been able. The *Merced* remained in New York ten days or a fortnight — not longer. Storms are frequent off Cape Hatteras. Deponent thinks they were towards Cape May on the third of September. Both the gales of the third and fifth of September were dead ahead. During their continuance the vessel lay close to the wind — made little or no headway and plenty of leeway.

On further direct examination, he says — A ship is said to be on her beam

ends, when her gunwales are under water. The Waterloo, in the two gales, was in that situation. The wreck, when they took possession of her, was two planks lower in the water forward than when they first fell in with her and boarded her.

WM. N. WINNETT.

Taken, subscribed, and sworn, Oct.

8th, 1829, before me,

E. C. BENEDICT.

And the said Caleb L. Upshur, having been by me, &c., &c. And so on with the other witnesses.

No. 30. — CERTIFICATE OF COMMISSIONER.

UNITED STATES OF AMERICA.

Southern District of New York, ss.

I, Erastus C. Benedict, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, under and by virtue of the "Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, do hereby certify, that the reason for taking the foregoing deposition is, that the testimony of the witnesses aforesaid is necessary in the cause in the caption of the said deposition named, and that they are bound on a voyage to sea; that a notification of the time and place of taking the said deposition, signed by me, was made out and served on James A. Hamilton, Esquire, proctor for the United States, on Robinson & Betts, Esquires, proctors for the claimants Barclay, and on H. & E. Wilkes, Esqrs., proctors for the claimant Buchanan, all residing in the city of New York, on the seventh day of October, instant, to be present at the taking of the deposition, and to put interrogatories, if they might think fit, of which notice a copy is hereto annexed, marked A.

That on the eighth day of October, in the year of our Lord one thousand eight hundred and twenty-nine, I was attended by the proctors aforesaid, and by Isaac A. Johnson, Esquire, the proctor for the libellants, and by the said witnesses; and each of the witnesses was by me carefully examined and cautioned, and sworn to testify the truth, and the testimony by him given was by me reduced to writing, and thereafter subscribed by the said witness in my presence. And, that I am not of counsel or attorney to either of the parties, nor in any way interested in the event of the cause named in the said caption.

E. C. BENEDICT,

U. S. Commissioner for the Southern District of New York.

No. 31.—ENDORSEMENT AND DIRECTION OF THE DEPOSITIONS AFTER BEING SEALED UP.

PETER HARMONY, &c., } Depositions on the part of the libellants.
vs. } E. C. BENEDICT, U. S. Commissioner.
 THE SHIP WATERLOO, &c. }

To the
District Court of the United States for the Southern District of New York,
 New York.

It is also proper that the commissioner should write his name across the seal.

No. 32.—ORDER TO OPEN DEPOSITIONS IN COURT.

On motion of Mr. Johnson, proctor for the libellants, Ordered, that the depositions taken in this cause, and remaining under the seal of E. C. Benedict, Esq., the commissioner, be now opened.

No. 33.—ORDER FOR COMMISSION OR DEDIMUS POTESTATEM.

PETER HARMONY, &c., }
vs. }
 THE SHIP WATERLOO, &c. }

On reading and filing a consent of the proctors of the several claimants in this cause, and on motion of Mr. Johnson, proctor for the libellants, Ordered, that a commission issue therein to John Scott, John Glenn, and Robert Purviance, Esquires, of Baltimore, directing them to examine Cornelius F. Driscoll, upon interrogatories to said commission annexed.

No. 34.—DEDIMUS POTESTATEM.

The President of the United States of America, to John Scott, John Glenn, and Robert Purviance, Esquires, of Baltimore, Greeting: Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any two of you, full power and authority to examine Cornelius F. Driscoll, now or lately the master of the brig Orion, of Baltimore, as a witness in a certain cause depending in the District Court of the United States, for the Southern District of New York, wherein Peter Harmony and Eliphalet Kingsbury are libellants, against the ship Waterloo, her tackle, &c., and her cargo, on the part of the said libellants, upon oath upon the interrogatories annexed to this commission, and to return the same annexed to this commission unto the said court, with all convenient speed, closed up under the seals of you or any two of you, the said commissioners.

Witness, Samuel R. Betts, Esquire, judge of the said court, at the Southern

District of New York, this sixth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, and of our independence the fifty-fourth.

FRED. J. BETTS, Clerk.

ISAAC A. JOHNSON, Proctor.

No. 35. — THE RETURN OF THE COMMISSIONERS.

The execution of this commission appears in certain schedules hereto annexed.

JOHN SCOTT, }
JOHN GLENN, } Commissioners.

No. 36. — DIRECT INTERROGATORIES.

United States District Court for the Southern District of New York.

Interrogatories to be administered to Driscoll, of Baltimore, in the State of Maryland, a witness to be produced, sworn, and examined in a certain cause of admiralty and maritime jurisdiction, now pending in the District Court of the United States, in and for the Southern District of New York, wherein Peter Harmony and Eliphalet Kingsbury are libellants, against the ship Waterloo, and her cargo, and Henry Barclay and George Barclay, and James C. Buchanan, and James A. Hamilton, District Attorney of the United States, are claimants, on the part and behalf of the libellants before the commissioners in the writ hereto annexed named.

First Interrogatory. — What is your name, age, place of residence, and business or profession?

Second Interrogatory. — Were you, or were you not, master of the brig Orion, on a voyage from Porto Cabello to Baltimore, in the month of August last? If yea, at what time did you sail from Porto Cabello and when did you arrive at Baltimore?

Third Interrogatory. — Did you or did you not during the voyage aforesaid, fall in with the wreck of the ship Waterloo of London? If yea, on what day, and in what latitude and longitude was the said ship Waterloo when you so fell in with her? Did you or did you not board the said ship, and was she not entirely deserted and abandoned by her crew, or was any one or more of her crew on board of her? Were any of her masts carried away, and which, if any? Did the said masts appear to have been carried away by violence and stress of weather, or how otherwise? Was any and what injury done to her hull by the carrying away of the said masts? Was there or not any, and if any, how much, water in the hold of the said ship, and did she or did she not appear to be in a sinking condition? Was she down by the head, and if so, how long? Did you go below? If you did, how long did you remain there? Was there any sickly or offensive smell below, and could or could not any

person remain below for any and what length of time? Could or could not any person have remained in the cabin over two or three minutes at a time, and if not, why? Were or were not any, and if any, how many, of your men taken sick while on board the wreck, and what, according to your best judgment, opinion, and belief, was the cause of such sickness, and was it or not caused by the smell in and from the cabin and hold of the wreck or how otherwise? Was or was not the said ship a complete wreck, and did you or did you not abandon her in the belief that she was sinking, and did you or not conceive it possible to get the said wreck into any port? declare fully.

Fourth Interrogatory. — Did or did not the brig *Merced*, of New York, fall in with the said wreck, at or about the time you did, and did or did not any, and if any, how many, of the *Merced's* crew board the *Waterloo* while you were on board of her? Did you or not declare to them your intention of abandoning the ship, and did you or not express your belief that she would sink before morning, or what did you say in relation thereto? How long after leaving the wreck did you remain in sight of her, and was or was not the wreck in sight on the morning after you fell in with her?

Fifth Interrogatory. — Do you know of any other matter or thing material or necessary, or that may tend to the benefit and advantage of the libellants in this cause? If yea, state the same as fully and particularly as if you were thereunto specially interrogated.

ISAAC A. JOHNSON, Proctor for Libellants.

DAVID B. OGDEN, Advocate for Libellants.

No. 37. — CROSS INTERROGATORIES.

District Court of the United States in and for the Southern District of New York.

Cross Interrogatories to be administered to Driscoll, of Baltimore, in the State of Maryland, a witness to be produced, sworn and examined in a certain cause of admiralty and maritime jurisdiction, now pending in the District Court of the United States in and for the Southern District of New York, wherein James A. Hamilton, District Attorney of the United States on behalf of the United States, and others, are claimants, and Peter Harmony and Eliphalet Kingsbury are libellants, against the ship *Waterloo*, and her cargo, on the part and behalf of the United States, before the commissioners in the writ hereunto annexed named.

First. If in answer to the third direct interrogatory, you answer, that you did, in August last, fall in at sea with the wreck of the brig *Waterloo*, of London, state particularly, clearly, and explicitly, the latitude and longitude in which the said ship *Waterloo* was, when you fell in with her, and also what port was the next direct port from the place at which the said wreck was, and particularly the state and direction of the wind at the time you left the said wreck, and whether it would not have been easier and less hazardous

to have taken the said wreck into one of the ports of some one of the West India Islands, or some other port not in the United States, than to have brought her into the port of New York.

Last Interrogatory. — If you know any other matter or thing material or necessary to the claimants, the United States, state the same as fully as if you had been particularly interrogated.

JAMES A. HAMILTON,

District Attorney of the U. S. for the Southern
District of New York.

PHILIP HAMILTON, of Counsel.

No. 38. — THE DEPOSITION.

Deposition of witnesses produced, sworn, and examined on the thirteenth day of November, in the year of our Lord eighteen hundred and twenty-nine, by virtue of a commission issued out of the District Court of the United States for the Southern District of New York, to us, the undersigned commissioners directed, for the examination of Cornelius N. Driscoll, a witness in a certain cause there depending and at issue, wherein Peter Harmony and Eliphalet Kingsbury are libellants against the ship Waterloo, her tackle, &c., and her cargo, on the part and behalf of libellants, as follows:

Cornelius F. Driscoll, of the city of Baltimore, being produced, sworn, and examined, on behalf of the libellants, doth depose as follows:

First. To the first interrogatory, he saith — That his name is Cornelius F. Driscoll, aged twenty-eight years, his place of residence is the city of Baltimore, and a mariner by profession.

Second. To the second interrogatory, he saith — That he was master of the brig Orion, on a voyage from Porto Cabello to Baltimore, in the month of August last. He sailed from Porto Cabello on the sixth of said month of August, and arrived at Baltimore about the twenty-eighth or twenty-ninth of said month.

Third. To the third interrogatory, he saith — That during the said voyage, and on the twenty-sixth of August aforesaid, he fell in with the wreck of the ship Waterloo, of London; the said ship was in the latitude of thirty-four degrees four minutes, and the longitude of seventy-five degrees and some minutes, when he so fell in with her. He boarded the said ship. She was entirely deserted and abandoned by her crew; there were none of her crew on board of her. Her main and mizzen masts were carried away by the board. The said masts appeared to be carried away by violence and stress of weather. Her bulwarks were gone entirely on her main decks and some of the chain bolts were drawn out in consequence of the carrying away of the masts. She did appear to be in a sinking condition; there was considerable water in her hold, but how much, deponent cannot say. Her fore channels were in the water with a heavy listport, whereby the water was frequently rolled on the

deck. Deponent went below six or seven times, and remained under the companion way where he could get fresh air, about ten minutes at a time. There was a very sickly and offensive smell below—so much so, that two of his men became sickly, being exposed to it, and it would have been impossible for any person to have continued below five minutes with safety, unless, like deponent, he was in a condition where he could receive a fresh supply of air. The said ship was a complete wreck, and deponent abandoned her in the belief that she was sinking, and he conceived it impossible to get the said ship into any port.

Fourth. To the fourth interrogatory, he saith—That the ship *Merced*, of New York, did fall in with the said wreck. Four of the said brig *Merced*'s crew boarded the said wreck about an hour after deponent, and while he was on board the said wreck. Deponent observed to Captain Kingsbury, that he thought the wreck would go down, but he would lay alongside of her till morning. About midnight a squall came up, and deponent bore up, and in the morning he had lost sight of the wreck and the *Merced*.

Fifth. To the fifth interrogatory, he answers—That he does not recollect any other matter or thing material or necessary, or that may tend to the benefit and advantage of the libellants in this cause, except that, in his judgment, the said wreck, when left by deponent, was in a most shocking and desperate condition.

Cross Interrogatories.

First. To the first cross interrogatory, he saith—That he has particularly detailed the latitude and longitude in which the same ship *Waterloo* was when he fell in with her, in the answer to the third interrogatory on the part of libellants, to which he refers as part of this answer. Norfolk, in the State of Virginia, was the next direct port from the place at which the said ship was. The wind was from the south-west when he left the wreck, and was stiff and squally; and deponent believes that it would not have been easier and less hazardous to have taken the said wreck into one of the ports of some one of the West India Islands, or some other port not within the United States, than to have brought her into the port of New York.

Last. To the last cross interrogatory, he answers, that he knows nothing else material or necessary to the claimants the United States.

C. F. DRISCOLL.

Sworn and subscribed before

JOHN SCOTT, }
JOHN GLENN, } Commissioners.

No. 39. — ENDORSEMENT AND DIRECTION. — (*Same as No. 31, ante, page 520.*)

No. 40. — ORDER TO OPEN THE COMMISSION. — (*Same as No. 32, ante, page 520.*)

No. 41. — NOTICE OF HEARING TO THE PARTIES.

District Court of the United States for the Southern District of New York.

PETER HARMONY and ELIPHALET
KINGSBURY
vs.
THE SHIP WATERLOO, HER TACKLE, &c. }

GENTLEMEN,—This cause will be brought on for hearing at the next term of this court, to be held at the City Hall, in the city of New York, on the first Tuesday of December next.

Dated New York, November 26th, 1829.

Yours, &c.,
ISAAC A. JOHNSON,
Proctor for Libellants.

To ROBINSON & BETTS, Esqrs.

H. & E. WILKES, Esqrs.

JAMES A. HAMILTON, Esq., Proctor for Claimants.

The notices from the proctors of claimants to the proctors of the libellant, are in the same form *mutatis mutandis*.

No. 42. — NOTICE OF HEARING TO THE CLERK.

(*Title of the cause as before.*)

Libel in rem for Salvage.

Issue joined October 5, 1829.

ISAAC A. JOHNSON, Proctor for Libellants.
H. & E. WILKES, for claimant Buchanan.
ROBINSON & BETTS, for claimants Barclay.
JAMES A. HAMILTON, for the United States.

SIR,—This cause will be brought on for hearing at the December term of this court.

November 28, 1829.

Yours,
ISAAC A. JOHNSON,
Proctor for Libellants.

To FRED. J. BETTS, Clerk.

No. 43. — NOTICE TO THE CLERK TO BRING THE PAPERS INTO COURT.

(*Title of the cause as before.*)

SIR,—On the hearing of this cause, the papers on file therein will be required in court, and you will please to have them there accordingly.

Yours &c.,
ISAAC A. JOHNSON, Proctor for Libellants.

To FRED. J. BETTS, Esq., Clerk.

No. 44. — ORDER FOR HEARING.

On motion of Mr. Johnson, Proctor for the Libellant, it is ordered that this cause be now brought on for hearing.

No. 45. — HEARING.

The libels and claims being read by the respective parties,

Mr. David B. Ogden, the Advocate for the Libellants, offered the depositions of William N. Winnett, mate, Caleb L. Upshur, second mate, James Jamison, William Jackson, and James Porter, seamen, on board of the Waterloo, taken *de bene esse*, and the testimony of Cornelius F. Driscoll, taken on a commission,

And called as a witness for the libellants, John Jones.

The testimony being closed,

Mr. Betts argued for the claimants Barclay,

Mr. Wilkes argued for the claimant Buchanan,

Mr. Cutting argued for the captain and crew,

Mr. Hamilton, District Attorney, argued for the United States,

Mr. Ogden argued for the libellant Harmony,

The court takes time to consider its decree.

No. 46. — DECREE ON THE MERITS, WITH A REFERENCE TO THE CLERK.

PETER HARMONY and ELIPHALET KINGSBURY	}
<i>vs.</i>	
THE SHIP WATERLOO, HER TACKLE, &c., and HER CARGO.	

The court having taken time to advise as to its decree in this cause, and as to the amount, proportion, and distribution of salvage; and counsel having been heard on the part of the libellants, and of the several claimants in the cause, and mature deliberation being had, it is now ordered, adjudged, and decreed, by the court, that out of the gross proceeds of sales under the writ of *venditioni exponas* issued in this cause, the clerk of this court, pay the taxed bills of costs of the officers of court, including the charges and disbursements allowed for preserving and unlading the above ship and cargo, together with duties on the cargo, and the tonnage duties on the ship; and it is further ordered, adjudged, and decreed as aforesaid, that two equal third parts of the nett amount of sales as aforesaid, remaining after deducting such payments as aforesaid, be paid by said clerk to the salvors in this cause; and that the same be distributed in the manner following, that is to say, two equal third

parts thereof to be paid to the libellant, Peter Harmony; and the remaining one equal third part thereof, to be divided into twelve equal parts, and one of such twelve equal parts to be paid to each of the persons employed in saving said ship and cargo, as follows, to wit: to Eliphalet Kingsbury, master of the brig *Merced*, one part; to William N. Winnet, first mate of said brig, one part; to Caleb L. Upshur, second mate of said brig, one part; to James Jamison, William Jackson, William Dyer, James Porter, John Stivers, William Grant, Joseph Dominguez and Nicholas Yanino, seamen on board said brig, and Felix Martinez, a passenger on board the same, each one part; —

And it is further ordered, adjudged, and decreed, as aforesaid, that out of the remaining one third part of the nett proceeds as aforesaid, the said clerk pay to the proctors of the libellants, of the British Consul, and of the claimants, Henry and George Barclay, their taxed costs in this cause; and to the several claimants in the cause of the United States of America against the said ship *Waterloo*, her tackle, &c., the taxed costs incident to their claims in the same.

And it is further ordered, that the clerk of this court ascertain and report in this case, the amount due to each libellant, pursuant to the terms of this decree; and that the final decree be so drawn, as to express the specific sum payable to the libellants respectively.

And it is further ordered, that the balance of the said one third part of the nett proceeds as aforesaid, remaining after deducting the amount of the taxed bills of costs last aforesaid, be retained in the office of discount and deposit of the Bank of the United States, in the city of New York, to the credit of this court, until the further order of the court respecting the same.

No. 47. — CLERK'S REPORT.

DISTRICT COURT OF THE UNITED STATES.

Southern District of New York.

PETER HARMONY and ELIPHALET KINGSBURY vs. THE SHIP WATERLOO, HER TACKLE, &c., and HER CARGO.	}
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In pursuance of the decree of this court, entered in the above cause on the nineteenth day of February, instant, by which it was, amongst other things, referred to me to ascertain and report the amount due each libellant, pursuant to the terms of the said decree, I, Frederick J. Betts, Clerk of this court, do report, that I have proceeded to make a computation of the amount due as aforesaid, pursuant to the terms of the said decree, and of the above-mentioned

order, and that the following is a detailed statement of such computation, and of the amount awarded to each of the said libellants, to wit:

Gross amount of sales \$39,262 90

Deduct.

Marshal's taxed costs, including duties, dis-
bursements, &c. \$24,295 78
Clerk's taxed costs 360 37 24,656 15

Nett proceeds, \$14,606 75

Two-thirds of nett proceeds being the amount awarded
libellants \$9,737 83½

Peter Harmony, two-thirds of last above am't,	\$6,491 88½	
Eliphalet Kingsbury, 1-12th of 1-3d of do.	270 49½	
William N. Winnett, do. do.	270 49½	
Caleb L. Upshur, do. do.	270 49½	
James Jamison, do. do.	270 49½	
William Jackson, do. do.	270 49½	
William Dyer, do. do.	270 49½	
James Porter, do. do.	270 49½	
John Stivers, do. do.	270 49½	
William Grant, do. do.	270 49½	
Joseph Dominguez, do. do.	270 49½	
Nicholas Yanino, do. do.	270 49½	
Felix Martinez, do. do.	270 49½	9,737 83½
		<u>\$4,868 91½</u>

All which is respectfully submitted,
New York, March 20th, 1830.

FRED. J. BETTS, Clerk.

—
No. 48. — FINAL DECREE.

On reading and filing the Clerk's Report in this cause, Ordered, on motion of Mr. J. A. Johnson, that the said report be, and the same is hereby confirmed, in all things: and it is further ordered, adjudged, and decreed, that the libellants recover salvage as follows:

Peter Harmony, ...	\$6,491 88½
Eliphalet Kingsbury, ...	270 49½
William N. Winnett, ...	270 49½
Caleb L. Upshur, ...	270 49½
James Jamison, ...	270 49½
William Jackson, ...	270 49½
William Dyer, ...	270 49½
James Porter, ...	270 49½
John Stivers, ...	270 49½

William Grant,		\$270 49½
Joseph Dominguez,		270 49½
Nicholas Yanino,		270 49½
Felix Martinez,		270 49½

• *Special Motion—Motion to attach the Marshal.*

No. 49. — NOTICE TO MARSHAL TO RETURN THE VENDITIONI EXPONAS.

District Court of the United States for the Southern District of New York.

PETER HARMONY and ELIPHALET	}
KINGSBURY	
<i>vs.</i>	
THE SHIP WATERLOO, HER TACKLE,	}
&c., and CARGO.	

SIR, — You will please to take notice, that you are hereby required to return the *venditioni exponas* heretofore delivered to you in the above entitled cause.

New York, February 8d, 1830.

Yours,

ISAAC A. JOHNSON, Proctor for Libellants.

To THOMAS MORRIS, Esq., Marshal, &c.

No. 50. — AFFIDAVIT OF SERVICE OF THE NOTICE.

District Court of the U. S. for the Southern District of New York.

PETER HARMONY, &c.,	}
<i>vs.</i>	
THE SHIP WATERLOO, &c.	}

Southern District of New York, ss.

John J. Young, of the city of New York, student-at-law, being duly sworn, deposes and says — That on the third day of February, instant, he served a notice, of which the above is a copy, on Thomas Morris, Esq., Marshal for the Southern District of New York, by delivering the same to him personally — and further says not.

JOHN J. YOUNG.

Sworn this 15th day of February, 1830,
before me,

FRED. J. BETTS, Clerk.

No. 51. — AFFIDAVIT FOR MOTION FOR ATTACHMENT FOR NOT RETURNING
VENDITIONI EXPNAS.

District Court of the U. S. — Southern District of New York.

PETER HARMONY and ELIPHALET
KINGSBURY
vs.
THE SHIP WATERLOO, &c. and CARGO. }
Southern District of New York, ss.

Isaac A. Johnson, proctor for the above libellants, being sworn, saith — That on the eighth day of October last, a motion was made and an order thereupon granted in this cause, that the ship Waterloo, above mentioned, her tackle, apparel, &c., and her cargo, be sold, and the proceeds brought into court, and on the same day a *venditioni expnas* was issued in said cause, and delivered to the Marshal of the Southern District of New York, returnable on the nineteenth day of October last; that the said property was sold under the said writ of *venditioni expnas*, on certain days between the fifteenth and thirty-first days of October last, as this defendant has been informed and believes, but that said process has not been returned into this court to the knowledge or belief of this deponent.

ISAAC A. JOHNSON.

Sworn this 15th day of February, 1830.
before me,

FRED. J. BETTS, Clerk.

No. 52. — ORDER FOR MARSHAL TO SHOW CAUSE WHY ATTACHMENT SHOULD
NOT ISSUE.

*District Court of the United States of America for the Southern District of
New York.*

PETER HARMONY and ELIPHALET
KINGSBURY
vs.
THE SHIP WATERLOO and CARGO. }

On reading a notice to the Marshal of the Southern District of New York, to return the *venditioni expnas* issued in this cause, and also on reading an affidavit of the service of said notice, and an affidavit of the proctor of the libellants, showing that a writ of *venditioni expnas* has been issued and delivered to said marshal, returnable on the nineteenth day of October last past, and that said writ was not returned, which papers were filed on the fifteenth instant; and on motion of Isaac A. Johnson, Esquire, for libellants, Ordered, that said marshal show cause before this court, at the City Hall, in the city of New York, on the twenty-second day of February, instant, why an attachment should not issue against him for not returning said writ.

No. 53. — ADMISSION OF SERVICE.

I admit due service of the above order on me, this 17th February, 1830.

THOMAS MORRIS.

No. 54. — ORDER THAT ATTACHMENT ISSUE AGAINST THE MARSHAL FOR NOT RETURNING A VENDITIONI EXPONAS.

On reading and filing a certified copy of an order that the Marshal show cause why an attachment should not issue against him, and his admission of the service of the same, on motion of David B. Ogden, ordered, that an attachment issue against Thomas Morris, Esq., Marshal of the District for not returning the *venditioni exponas* in this cause.

No. 55.—ORDER TO PAY OVER THE SURPLUS AND REMNANTS.

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
FOR THE SOUTHERN DISTRICT OF NEW YORK.

In the matter of the petition of the several
owners of the ship Waterloo, and owners and
consignees of her cargo (former claimants in
this court in respect thereto), for the remain-
der of the proceeds of the said ship and cargo,
now remaining in court;

Mr. Wm. Betts, proctor and advocate for the promovents, now presents in court, a power of attorney duly executed by the said parties, constituting George Barclay and Henry Barclay, of the city of New York, merchants, their attorneys in fact, with full powers to act jointly or severally in this behalf, praying, that the moneys aforesaid may be paid over to the said George and Henry Barclay, for the benefit of the parties concerned. And this court being satisfied of the full right and authority of the promovents in this matter, the said power of attorney, and accompanying evidences and authentications being filed in court, it is ordered and decreed by this court, that the clerk pay over to the said George and Henry Barclay, or to either of them, or their proctor in this behalf, the proceeds of the said ship Waterloo and her cargo, now remaining undisposed of in court, first deducting therefrom the legal fees and charges of the officers of court, chargeable thereon, and to be certified by the court.

Proceedings on Libel of Information.

NO. 55.—A LIBEL OF INFORMATION AGAINST A WRECK BROUGHT IN BY SALVORS, FOR A FORFEITURE, FOR A VIOLATION OF THE NAVIGATION ACTS—BEING BROUGHT INTO A PROHIBITED PORT.

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In Admiralty.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of information of James A. Hamilton, Attorney of the said United States, for the Southern District of New York, who prosecutes on behalf of the said United States, and being present here in court in his proper person, in the name and on the behalf of the said United States, against the ship *Waterloo*, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:

First. That Mordecai M. Noah, Surveyor of the Customs for the district of the city of New York, heretofore, to wit, on the twelfth day of October, in the year of our Lord one thousand eight hundred and twenty-nine, at the city of New York, and within the Southern District of New York, on waters that are navigable from the sea by vessels of ten or more tons burthen, seized as forfeited to the use of the said United States, the ship, or vessel commonly called a ship, the *Waterloo*, her tackle, apparel, and furniture, being the property of some person or persons to the said attorney unknown.

Second. That the said ship *Waterloo* is a ship or vessel owned wholly or in part by a subject or subjects of His Britannic Majesty, and which said ship or vessel, after the thirtieth day of September, in the year one thousand eight hundred and eight, and also after the thirtieth day of September, in the year one thousand eight hundred and twenty, did come and arrive from a port or place in a colony or territory of His Britannic Majesty, to wit, from Annatto Bay, in the island of Jamaica, in the West Indies, which said port is, and was at the time the said ship sailed from thence, and also at the time of the arrival of the said ship at the port of New York, as is hereinafter mentioned, by the ordinary laws of navigation and trade, closed against vessels owned by citizens of the United States—and that the ports of the United States were, at the time of the arrival of the said ship at the port of New York, and still are, closed against the said ship or vessel called the *Waterloo*, which said ship or vessel being so excluded from the ports of the United States, did enter the same, to wit, the port of New York, in the Southern District of New York aforesaid, in violation of the acts of the Congress of the United States, in such cases made and provided. And that by force and virtue of the said acts of Congress, in such case made and provided, the said ship or vessel, her

tackle, apparel, and furniture, became and are forfeited to the use of the said United States, and that the same are now in custody of the marshal of this court, in the suit of certain persons claiming salvage.

And the said attorney saith that by reason of all and singular the premises aforesaid, and by force of the statute in such case made and provided, the aforementioned and described ship or vessel, her tackle, apparel, and furniture, became and are forfeited to the use of the said United States.

Lastly. That all singular, the premises aforesaid, are, and were, true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court, whereupon the said attorney prays the usual process and monition of this Honorable Court in this behalf to be made, and that all persons interested in the before mentioned and described ship or vessel, may be cited in general and special to answer the premises, and all due proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes aforesaid, and others appearing, be condemned by the definitive sentence and decree of this Honorable Court, as forfeited to the use of the said United States, according to the form of the statute of the said United States in such cases made and provided.

JAMES A. HAMILTON,
Attorney U. S. for the Southern District of New York.

NO. 56.—NOTICE FOR PUBLICATION CONTAINING THE SUBSTANCE OF THE
LIBEL.

UNITED STATES OF AMERICA.

Southern District of New York, ss.

Whereas a libel of information has been filed in the District Court of the United States of America, for the Southern District of New York, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and twenty-nine, by James A. Hamilton, Esq., Attorney of the United States in behalf of the United States, against the ship *Waterloo*, her tackle, apparel, and furniture, alleging, in substance, that Mordecai M. Noah Surveyor of the Customs, for the district of the city of New York, on the twelfth day of October, 1829, on waters navigable from the sea by vessels of ten or more tons burthen, seized said vessel and cargo as forfeited to the use of the United States; that said vessel is owned wholly or in part by a subject or subjects of the king of Great Britain, and after the thirtieth day of September, 1820, did come and arrive from Annatto Bay in the island of Jamaica, in the West Indies, a port, by the ordinary laws of navigation and trade, closed against vessels owned by citizens of the United States, and that the ports of the United States were, and are, closed against said ship or vessel; and that said vessel did enter the port of New York, in violation of the acts of the Congress of the United States in such cases made and provided; and that said vessel, her tackle, apparel, and furniture became thereby forfeited

to the use of the United States. And praying that the same may be condemned as forfeited as aforesaid.

Now, therefore, in pursuance of the monition under the seal of the said court to me directed and delivered, I do hereby give public notice to all persons claiming the said ship, her tackle, &c., or in any manner interested therein, that they be and appear before the said District Court to be held at the city of New York, in and for the said Southern District of New York on the first Tuesday of November next, at eleven o'clock in the forenoon of that day (provided the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter), then and there to interpose their claims, and to make their allegations in that behalf.

Dated this 15th day of October, 1820.

THOMAS MORRIS, U. S. Marshal, &c.

ISAAC A. JOHNSON, Proctor for Libellant.

No. 57.—ORDER FOR PROCESS IN REM IN A LIBEL OF INFORMATION.

On filing a libel of information on behalf of the United States by James A. Hamilton, Esq., U. S. District Attorney, it is ordered that a monition and attachment issue against the ship *Waterloo*, her tackle, apparel, and furniture, and cargo.

No. 58.—MONITION AND ATTACHMENT IN REM ON A LIBEL OF INFORMATION.

— (*As ante*, No. 4, page 500.)

No. 59.—CLAIM AND ANSWER OF THE OWNER OF A SAVING VESSEL TO A LIBEL OF INFORMATION AGAINST A WRECK FOR A FORFEITURE.

District Court of the U. S. for the Southern District of New York.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The answer and claim of Peter Harmony, of the city of New York, intervening for his interest to the libel of information filed by James A. Hamilton, Esq., District Attorney of the United States of America, for the Southern District of New York, against the said ship *Waterloo*, her tackle, apparel, and furniture, alleges as follows:

First. That the brig *Merced*, of New York, owned by and belonging to the said claimant, being on a voyage from Havana, in the island of Cuba, to Cadiz, in Spain, the master of the said brig *Merced*, on the twenty-seventh day of August last past, discovered a ship in distress, dismasted, and apparently deserted; that he boarded said ship, and found her to be the British ship *Waterloo*, of London, having twelve feet water in her hold, being dismasted, and abandoned by her captain and crew, and having on board a cargo of rum, sugar, coffee, arrow-root, and lance-wood spars.

Second. That the master of the said brig Merced took the said ship Waterloo in tow, and made for the port of New York, where he arrived with the said ship on the twelfth day of September last past.

Third. That on or about the sixteenth day of September last past, he, the said claimant, together with Eliphalet Kingsbury, the master of the brig Merced, for themselves and all others entitled, exhibited their libel in this Honorable Court, against the said ship Waterloo, her tackle, apparel, furniture, and cargo, therein stating in substance the matters hereinbefore set forth, and praying that the said ship and cargo might be attached and taken by the process of this Honorable Court, and a reasonable salvage thereout decreed to the said libellants; and thereupon the said ship Waterloo and her cargo were attached and taken by the Marshal of the United States for the Southern District of New York, under and by virtue of the process and monition of this court, and such proceedings were afterwards had, that the said ship Waterloo was, by an order and decree of this Honorable Court, made on or about the eighth day of October last past, ordered to be sold, and the proceeds brought into and deposited in court; and the same have been accordingly sold by or under the direction of the said marshal.

Fourth. That he is entitled, as owner of the said brig Merced, to a reasonable salvage out of the proceeds of the said ship Waterloo, and therefore he claims the same, and humbly prays, that the premises being considered, this Honorable Court may adjudge and decree such reasonable salvage to be paid to this claimant out of the proceeds of the said ship Waterloo, as to the court may seem proper.

And the said claimant denies that the said ship Waterloo, her tackle, apparel, and furniture, or the proceeds thereof, so far as regards the rights of this claimant to his salvage as aforesaid, are forfeited to the use of the United States, in manner and form as in the said libel is alleged; and the said claimant humbly prays, that his reasonable costs, in this behalf sustained, may be adjudged to him, &c.

ISAAC A. JOHNSON, Proctor, &c.

Sworn Oct. 3d, 1829,

before me,

FRED. J. BETTS, Clerk.

D. B. OGDEN, Advocate.

No. 60.—STIPULATION FOR COSTS. — (*As ante*, No. 10, page 505.)

No. 61.—CLAIM AND ANSWER OF SALVORS TO A LIBEE OF INFORMATION FOR A FORFEITURE.

District Court of the United States for the Southern District of New York.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States in and for the Southern District of New York.

The answer and claim of Eliphalet Kingsbury, of the city of New York, shipmaster, on behalf of himself, and the officers and crew of the brig-Merced, of New York, intervening for their interest in the ship Waterloo, her tackle, &c., and cargo, to the libel of information filed by James A. Hamilton, Esquire, District Attorney of the United States of America for the Southern District of New York, against the said ship Waterloo, her tackle, apparel, and furniture, alleges as follows:

First. That on or about the twenty-seventh day of August last past, this claimant being then master of the brig Merced, of New York, whereof Peter Harmony, of the said city, merchant, then was and still is owner, together with William Winnett, the first mate thereof, Caleb L. Upshur, the second officer thereof, and William Jackson, James Porter, William Dyer, John Stivers, James Jamison, William Grant, Felix Martinez, Joseph Dominguez, and Nicholas Yanino, the crew of the said brig Merced, in latitude thirty-four degrees north, and longitude seventy-five degrees fifteen minutes west, discovered a ship in distress, with the main-mast and mizzen-mast thereof carried away. That this claimant, together with part of the crew of the said brig Merced, boarded the said ship, and found her to be the British ship Waterloo, of London, having twelve feet water in her hold, in a sinking condition, dismasted as aforesaid, and entirely deserted, and left a derelict on the ocean. That from a cargo book which was found on board the said wreck, the cargo on board of her appeared to consist of rum, sugar, arrow-root and lance-wood spars. That this claimant, and the officers and crew of the said brig Merced, took the said ship Waterloo in tow, and made for the port of New York, where this claimant, after great difficulties, dangers, and privations, arrived with the said ship Waterloo, on the twelfth day of September, last past.

Second. That on or about the sixteenth day of September last past, the said Peter Harmony, together with this claimant, for themselves and all others entitled, exhibited, their libel in this Honorable Court, against the said ship Waterloo, her tackle, apparel, furniture, and cargo, therein stating in substance the matters hereinbefore set forth, and praying that the said ship and cargo might be attached and taken by the process of this Honorable Court, and a reasonable salvage thereout decreed to the said libellants; and thereupon the said ship Waterloo and her cargo were attached and taken by the Marshal of the United States for the Southern District of New York, under and by virtue of the process and monition of this Court, and such proceedings were afterwards had, that the said ship Waterloo and her cargo were, by an order and decree of this Honorable Court, made on or about the eighth day of October, last past, ordered to be sold, and the same were accordingly sold by or under the direction of the said Marshal, and the proceeds thereof ordered to be brought into and deposited in this Honorable Court.

Third. And the said claimant further answering says— That he, together with the officers and crew of the said brig Merced, are entitled to a reasonable salvage out of the proceeds of the said ship Waterloo; and therefore the said

Eliphalet Kingsbury claims the same. And this claimant further saith, that the said officers and crew, before the filing of the libel of the said the United States, as far as this claimant has been able to ascertain, left the city of New York on foreign voyages, and have left with this claimant their letter of attorney, authorizing him to appear for them in all courts and places on their behalf in relation to the said ship Waterloo and her cargo, in order to protect their interests and claims therein. And this claimant further answering, denies that the said ship Waterloo, her tackle, apparel, and furniture, or the proceeds thereof, so far as regards the rights of this claimant, and the officers and crew of the said brig Merced, to their salvage as aforesaid, are forfeited to the use of the United States, in manner and form as in the said libel is alleged. And this claimant humbly prays, that the premises being considered, this Honorable Court, may adjudge and decree such reasonable salvage to be paid to this claimant and the officers and crew of the said brig Merced, out of the proceeds of the said ship Waterloo, as to the said court may seem proper, with costs.

And the said claimant humbly prays, that his reasonable costs in this behalf sustained, may be adjudged to him, &c.

E. KINGSBURY.

Sworn by E. Kingsbury, this 4th
day of November, 1829.

FRED. J. BETTS, Clerk.

F. B. CUTTING, Proctor for Claimant.

F. R. TILLOU, of Counsel.

No. 62. — STIPULATION FOR COSTS. — (*As ante*, No. 10, page 505.)

No. 63. — ANSWER AND CLAIM OF A CONSUL TO A LIBEL OF INFORMATION
AGAINST A WRECK FOR A FORFEITURE.

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The claim and answer of James C. Buchanan, his Britannic Majesty's Vice-Consul in and for the city and State of New York, and Eastern New Jersey, intervening for the interest of the owners of the British ship Waterloo, her tackle, apparel, and furniture, to the libel of information of the United States of America, alleges as follows:

First. That the said ship Waterloo is, as stated in the second article of the said libel, and as the said claimant believes to be true, British property, and that the said claimant claims the same on behalf of the owner or owners of the said ship.

Second. That he does not know, and therefore cannot say, whether the said ship Waterloo came and arrived in the said port of New York from Annatto

Bay, in the island of Jamaica, in the West Indies, as stated and set forth in the said libel, nor if the fact be so, whether a forfeiture of the said ship Waterloo, her tackle, apparel, and furniture, was incurred in consequence thereof, as stated in the said libel.

Third. That the said ship Waterloo was found dismasted and derelict at sea, by a certain brig or vessel called the Merced, said ship having been abandoned by the master and crew thereof, and that the said ship Waterloo, being a wreck, was taken possession of by the captain and crew of the said brig Merced, and brought into the said port of New York, without any act or intention or volition on the part of the said ship Waterloo, her captain, officers, or crew.

And the said claimant prays that the said ship Waterloo, her tackle, apparel and furniture, may be restored to the said claimant, and that he may be hence dismissed with his reasonable costs and charges in this behalf sustained.

J. C. BUCHANAN.

Sworn this 3d day of November, 1829,

before me,

FRED. J. BETTS, Clerk.

H. & E. WILKES,
Proctors and Advocates.

No. 64. — STIPULATION FOR COSTS. — (*As ante*, No. 10, page 505.)

No. 65. — ANSWER AND CLAIM OF THE AGENTS OF FOREIGN UNDERWRITERS
TO A LIBEL OF INFORMATION FOR A FORFEITURE.

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In Admiralty.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The answer and claim of Henry Barclay and George Barclay of the city of New York, merchants, intervening for the interest of their principals, to the libel of information of James A. Hamilton, Esquire, Attorney of the United States, for the Southern District of New York, filed on behalf of the said United States, alleges as follows:

First. That these respondents admit, that the said ship Waterloo is a ship or vessel owned wholly or in part by a subject or subjects of his Britannic Majesty; and that the said ship or vessel, after the thirtieth day of September, eighteen hundred and eighteen, and also after the thirtieth day of September, eighteen hundred and twenty, did come from a port or place in a colony or territory of his Britannic Majesty, to wit, from Annatto Bay in the island of Jamaica, in the West Indies; which said port is, and was at the time the said vessel sailed from thence, and also at the time of the arrival of the said ship

at the port of New York, by the ordinary laws of navigation and trade, closed against vessels owned by citizens of the United States. But these respondents deny that the ports of the United States were, at the time of the arrival of the said ship at the port of New York, or at any time afterwards, closed against the said ship or vessel called the *Waterloo*, or that the said ship was excluded from the said port of New York. And they deny that the said ship did enter the said port of New York in the said district, in violation of the acts of the Congress of the United States in such cases made and provided, and that, by virtue of the said acts, the said ship or vessel, her tackle, apparel, and furniture, became forfeited to the use of the said United States.

Second. That the said vessel, on or about the twenty-seventh day of August, eighteen hundred and twenty-nine, was found by the captain and crew of the brig *Merced* of New York upon the high seas, and without the jurisdiction of the United States, totally disabled, a wreck, and entirely abandoned by her captain and crew; and that the said ship or vessel was then and there taken in tow by the said brig *Merced* and brought into the port of New York. And these respondents deny that the said wreck, so brought as aforesaid into the port of New York, was, or was intended to be, comprehended in the provisions of the said navigation acts; but they insist and charge, that the said navigation acts were intended to apply, and in fact do apply solely, to vessels voluntarily entering the ports of the United States for purposes of trade and navigation.

Third. That by a commission dated the second day of July, in the year of our Lord one thousand eight hundred and seventeen, and signed by Joseph Marryat, Chairman, and John Bennet, junior, Secretary of the committee for managing the affairs of the underwriters at Lloyd's in London, in that part of the United Kingdom of Great Britain and Ireland called England, these respondents were appointed to act as agents for the subscribers to Lloyd's at the port and custom house district of New York, subject to the instructions in the said commission mentioned; and that by the said commission, they are authorized and empowered to attend to the interests of the subscribers to Lloyd's in general, as by the said commission, now in the possession of these respondents, will more fully and at large appear, and to which, for greater certainty, these respondents pray leave to refer.

And these respondents, further answering, say, that they are likewise the agents for the underwriters at Liverpool, in that part of the United Kingdom of Great Britain and Ireland, called England; and for the underwriters in Glasgow, in that part of the said United Kingdom called Scotland, under two several commissions, with the like authority and instructions as mentioned in the said commission from the underwriters at Lloyd's in London aforesaid, as by the said several commissions from the underwriters at Liverpool, and from the underwriters at Glasgow, reference being thereunto had, will more fully and at large appear, and to which, for greater certainty, these respondents pray leave to refer.

And these respondents, further answering, say, that they have no doubt that

the said ship *Waterloo*, or some part thereof, was insured at some or one of the said places by some or all of the said underwriters therein; and they have no doubt but that the said vessel, or some part thereof, hath been abandoned by the persons interested therein, to the said underwriters, or some or one of them, and that the right of ownership in the said ship, or some part thereof, hath accrued to the said underwriters, or some or one of them; but these respondents cannot speak on this point with absolute certainty, but only to the best of their belief, inasmuch as a sufficient time hath not elapsed since the twelfth day of September, eighteen hundred and twenty-nine, when the said ship was, as aforesaid, brought into the said port of New York, to communicate the circumstance to the said several underwriters, or any of them, and obtain their answer. That immediately after the said vessel was brought into the port of New York, as aforesaid, they wrote to the said underwriters at London, informing them of the circumstances of the case as far as known to these respondents, and requesting information from the said underwriters of their rights and interests in and to the said vessel, or any part thereof, to which they have, for the reason aforesaid, obtained no answer,

Fourth. That a libel hath been filed in this Honorable Court by Peter Harmony, the owner, and Eliphalet Kingsbury, the captain of the said brig *Merced*, against the said *Waterloo*, claiming salvage for having brought the said ship *Waterloo* into this port; and these respondents insist, that if any portion of the said ship be forfeitable under the acts of navigation aforesaid, the salvage that may be adjudged to the said owner and captain is alone forfeitable, as they alone had any agency in the alleged infraction of the said acts.

And, therefore, these respondents, on behalf of the said several underwriters, claim the said vessel, and pray that the said vessel, or the proceeds thereof, over and above the salvage that may be decreed, may be detained in the custody of this Honorable Court, for such reasonable time as may seem proper, wherein the rights and interests of the above-mentioned underwriters may be ascertained; and that this Honorable Court may further decree that the said surplus proceeds, over and above the salvage that may be awarded by this Honorable Court, may be paid to these respondents, upon due proof being made in manner and form as this Honorable Court may direct, that the said underwriters, or any of them, have an interest in and a right to receive the same, or such part thereof as they shall appear to be entitled to.

And these respondents will ever pray, &c.

GEORGE BARCLAY.

Sworn this 3d of November, 1829,
before me,

FRED. J. BETTS, Clerk.

ROBINSON & BETTS,
Prs. and Advs. for Claim'ts.

No. 67. — ORDER FOR DEFAULT ON RETURN OF PROCESS IN REM ON A LIBEL OF INFORMATION.

The libel having been read, and the marshal having returned (*as ante*, No. 8, page 502).

No. 68. — NOTICES OF HEARING, TO PARTY AND CLERK. — (*Same as Nos. 41, 42, 43, ante*, page 526.)

No. 69. — FINAL DECREE DISMISSING A LIBEL OF INFORMATION.

This cause having been brought on for hearing, and the advocates of the respective parties being heard, and due deliberation being had, on motion of Mr. Johnson, proctor for the defendant Harmony, It is ordered, adjudged, and decreed, that the libel in this case be dismissed.

No. 70. — LIBEL IN REM BY A SHIP-BUILDER FOR A PORTION OF THE PRICE.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of A. B., of the city of New York, ship-builder, against the ship or vessel Madison, whereof C. D. is, or lately was, master, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows:

First. That, on the first day of March last, he was employed by E. F., of the city of Boston, merchant, to furnish the materials and build for him, as owner, the ship since called the Madison, of about seven hundred tons burthen, and now in the port of New York, for the sum of eighteen thousand dollars, payable as the work should progress, the final payment of three thousand dollars to be made when the said vessel should be launched.

Second. That he proceeded to build the said vessel, and in all things faithfully performed his contract, and the said ship was safely launched on the fourth day of December, instant, and delivered to the said E. F., and accepted by him.

Third. That the said E. F. now refuses to pay to the libellant the said final payment of three thousand dollars, which is justly due to him according to his contract.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Whereupon the libellant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture, and that all persons claiming any right in said vessel, may be cited to appear and answer all the matters aforesaid, and that the said ship may be

condemned and sold to pay the amount which shall be due to the libellant, on his contract aforesaid, with interest and costs, and that he may have such other and further relief as in law and justice he is entitled to receive.

A. B.

Sworn, &c., before me,

G. H., U. S. Commissioner.

J. B., Proctor.

E. L., Advocate.

No. 71. — LIBEL FOR THE SAME CAUSE IN PERSONAM — AGAINST THE OWNER.

To the Honorable, &c. (*as in the last precedent*).

The libel of A. B., of the city of New York, ship-builder, against C. D., of the city of Boston, merchant, owner of the ship or vessel Madison, in a cause of contract, civil and maritime, alleges as follows:

(First, second, third, and fourth articles, as in the last precedent.)

Whereupon the libellant prays, that a warrant of arrest in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said C. D., and that he may be required to answer on oath this libel, and the matters herein contained, and that this Honorable Court will be pleased to decree to the libellant the payment of the amount which shall be due to him for building said ship, with interest and costs, and to give him such other and further relief as in law and justice he may be entitled to receive.

(*To be signed and sworn to as before.*)

No. 72. — LIBEL IN REM BY A SUPERINTENDENT OF THE BUILDING OF A SHIP FOR HIS COMPENSATION.

To the Honorable, &c. (*the address and statement of parties as in No. 70, ante, page 541*).

First. That in the month of March last, he was employed by E. F., of the city of New Haven, to purchase materials, employ mechanics, and direct and superintend the building of a brig or vessel, in the city of New York, the funds to be furnished, and payments made by the said C. D., for the salary or wages, of seven hundred and fifty dollars, for the time between the laying the keel and the launching of said ship.

Second. That the libellant proceeded without delay faithfully to perform his duties under his said contract, and the keel of said ship was laid on the fourth day of June last, and the work has proceeded with all practicable dispatch, and the said vessel would have been ready to be launched on the first day of October last, had the necessary funds been supplied to make the necessary payments and complete the work.

Third. That on the tenth day of September last, the said C. D. sold the said unfinished vessel to one E. F., of the city of New York, subject to the payment of the libellant, and ceased to furnish funds and to make the necessary payments, and the said E. F. declined to proceed with finishing the said vessel, and discharged the libellant, and both said C. D. and E. F. refuse to pay the libellant for his said services, and the whole of his said compensation is now due to him, amounting to seven hundred and fifty dollars, besides interest.

Fourth. That his demand for his said services is, by the law of the State of New York, a lien upon the said vessel. That the said vessel is still unfinished, and has not yet received a name, and is intended to be of about one thousand tons burthen.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this court.

Wherefore the libellant prays, that process in due form of law, according to the course of this Honorable Court, in causes of admiralty and maritime jurisdiction, may issue against said unfinished vessel, and that all persons claiming any right in said vessel, and especially the said C. D. and E. F., may be cited to appear and answer all the matters aforesaid, and that the said unfinished vessel may be condemned and sold to pay the amount which shall be due to the libellant, on his contract aforesaid, with interest and costs, and that he may have such other and further relief as in law and justice he is entitled to receive.

(To be signed and sworn to as No. 70, ante, page 541.)

No. 73. — THE SAME IN PERSONAM. — (*The statement of the parties and the prayer, like No. 71, and the articles the same as No. 72, ante, page 542.*)

No. 74. — LIBELS BY THE OWNER AGAINST THE BUILDER, WHEN THERE IS AN ADMIRALTY CAUSE OF ACTION. — (*Can be easily framed from the foregoing precedents.*)

No. 75. — LIBEL IN REM BY A MATERIAL MAN FOR MATERIALS FOR TACKLE, APPAREL, OR FURNITURE, TO BUILD OR FINISH A VESSEL.

To the Honorable, &c.

The libel of A. B., of the city of Troy, against the sloop or vessel Coaster, whereof C. D. is, or lately was, master, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows:

First. That some time in the month of May last, E. F., of the city of Albany, being then, as owner, building a sloop or vessel since called the Coaster, and having employed the said C. D., her intended master, to act

as his agent in building the same, applied, by the said master, to the libellant to furnish the for building said vessel.

Second. That the libellant accordingly furnished, on the order of said master and builder, the various articles of set forth in the account or schedule hereto annexed, at the prices mentioned in said account, which are the market prices therefor, and are reasonable and just, and the said articles were delivered to said vessel at Albany aforesaid, to be used in building and completing her, and the value thereof was, by the maritime law, and the law of the State of New York, a lien upon said vessel, her tackle, apparel, and furniture.

Third. That the said E. F. paid to the libellant, from time to time, on account, the sums credited in said account, leaving due the balance thereof, amounting to dollars, with interest, which the said E. F. has neglected and refused to pay.

Fourth. That the said vessel is now at Albany, within the Northern District of New York, where she was built, which port she has never left.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Whereupon the libellant prays, &c.

(*Prayer, and signatures, and jurat as in No. 70, ante, page 541.*)

**NO. 76. — LIBEL FOR THE SAME CAUSE IN PERSONAM AGAINST THE OWNER
— WITH A CLAUSE FOR THE ATTACHMENT OF HIS GOODS, CHATTELS, CREDITS, AND EFFECTS.**

To the Honorable, &c.

The libel of A. B., of the city of Troy, against E. F., of Albany, owner of the sloop Coaster, in a cause of contract civil and maritime.

(First, second, third, fourth, and fifth articles as in the last precedent.)

Sixth. That the said E. F., has absconded from this district, or is concealed, or cannot be found therein, and has goods and chattels in this district, and credits and effects in the hands of J. K., of the city of Buffalo.

Whereupon the libellant prays that a warrant of arrest, in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said E. F., and that he may be required to answer on oath this libel and the matters herein contained, and that if he cannot be found, then that his goods and chattels in this district may be attached to a sufficient amount to answer the libellant, and if sufficient goods and chattels cannot be found in this district, then that his credits and effects, in the hands of said J. K., of Buffalo, may be attached to a sufficient amount to answer the libellant, and that said J. K. may be cited to appear and answer such interrogatories as may be propounded to him by the libellant,

and that this Honorable Court will be pleased to decree to the libellant the payment of the amount which shall be due to him for the cause aforesaid, with interest and costs, and to give him such other and further relief as in law and justice he may be entitled to receive.

A. B.

Sworn, &c., before me,

GEORGE W. MORTON,

U. S. Commissioner.

J. B., Proctor.

E. L., Advocate.

NO. 77. — LIBEL IN REM BY THE OWNERS OF A VESSEL TO OBTAIN POSSESSION
OF HER.

To the Honorable, &c.

The libel of A. B. and C. D., of Bath, merchants, owners of the schooner or vessel, the Sea Gull, her tackle, apparel, and furniture, against all persons intervening for their interest therein, in a cause of possession, civil and maritime, alleges as follows:

First. That they are the true and only owners of the schooner Sea Gull, her tackle, apparel, and furniture, and being such owners, on or about the tenth day of May, 1846, appointed one E. F., master of said vessel, to navigate and sail her for them, at the wages agreed upon between them, and the said E. F., continued to be such master till the fifth day of August, instant, when the libellants removed him as master, and appointed another master in his place.

Second. That when the new master, so appointed by the libellants, went on board said vessel, by their orders, to enter upon his duties as such master, the said E. F. refused to give up the possession or the papers of said vessel to the said master, or to the libellants, who have demanded the same — to the great damage of the libellants.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Whereupon the libellants pray that process in due form of law, according to the course of this Honorable Court, in causes of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture, and that the said E. F. may be personally cited to appear and answer all the matters aforesaid, and that the said vessel, her tackle, apparel, and furniture, may be delivered to the libellants, and that the said E. F. may be condemned to pay to the libellants their damages and costs in the premises, and that they may have such other and further relief in the premises as in law and justice they may be entitled to receive.

A. B.

C. D.

Sworn, &c.

J. B., Proctor.

C. L., Advocate.

No. 78. — LIBEL IN REM AGAINST MERCHANDISE FOR POSSESSION.

To the Honorable, &c.

The libel of H. B., of the city of New York, merchant, against nine cases of merchandise, marked A 1 to 9, and against C. D., master of the ship or vessel the Carrier, in a cause of possession, civil and maritime, alleges as follows:

First. That heretofore, while the said vessel was lying in the port of Liverpool, in England, and about to sail for the port of Philadelphia, John Brown, of Liverpool aforesaid, shipped on board said vessel, consigned to the libellant, nine cases of merchandise, marked A, 1 to 9, and the said master signed the usual bill of lading for the same, whereby he agreed to deliver the same to the libellant, in New York, on payment of the freight for the same at the rate of twenty cents per cubic foot.

Second. That the said ship having arrived in the said port of New York, the libellant paid to the said master his freight on the said merchandise, and demanded the delivery thereof, but the said master refused to deliver the same to him unless the libellant would pay one hundred and fifty dollars as an average contribution, which the libellant was not bound to pay, not being liable therefor, and the said master still refuses to deliver to him the said nine cases, and each of them, which are of the value of two thousand dollars and upward, to the great damage of the libellant.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Wherefore, the libellant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said nine cases of merchandise, and that the said C. D. may be personally cited to appear and answer, on oath, all the matters aforesaid, and that the said merchandise may be delivered to the libellant, and that the said C. D. may be condemned to pay to the libellant his damages and costs in the premises, and that he may have such other and further relief in the premises as in law and justice he may be entitled to receive.

A. B.

Sworn, &c., before me,

J. W. M., Clerk.

J. B., Proctor.

W. M., Advocate.

No. 79. — A LIBEL IN REM BY THE OWNER TO RECOVER A VESSEL WITHHELD ON A CLAIM OF TITLE.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States, for the Southern District of New York.

The libel of Alfred Peabody, of Salem, in the Commonwealth of Massachu-

setts, merchant, against the schooner *Lucinda Snow*, whereof
 Stubbs, of now is or late was master, her tackle, apparel, and
 furniture, and against the said Stubbs, master, and against
 Rogers, of in the State of Maine, and against all
 other persons lawfully intervening for their interest in the said schooner, in a
 cause of possession, civil and maritime, alleges as follows :

First. That the libellant is the true and lawful owner, absolutely of one-half, and the lawful owner by way of mortgage of the remaining half of the said schooner *Lucinda Snow*, of ninety-nine tons burthen, now lying in the port of New York, and had the possession and employment thereof as such owner, till deprived of her as herein set forth.

Second. That the said schooner is wrongfully withheld from the libellant by the said Stubbs and said Rogers, on an alleged ground of title, depending upon a pretended sale by one Dawson Lincoln, now deceased, as master of said schooner *Lucinda Snow*, which sale was unauthorized, without any necessity and without any legal survey or condemnation of said schooner, in violation of the duty of the said Dawson Lincoln as master, in fraud of the libellant, and is utterly void.

Third. That on or about the early part of the month of December last past, the libellant and the said Dawson Lincoln purchased the said schooner then lying in the port of Boston, for the sum of \$2,400, and the libellant paid the sum of \$600, on account of his half thereof and the said Lincoln paid \$600 on account of his half, and for remaining \$1,200 the libellant became surety, and signed a joint note for \$1,200 with said Lincoln, for the balance of such purchase money. That, upon such purchase being made, a bill of sale was duly executed and delivered by the then owners of said schooner to the libellant and the said Lincoln, whereby the libellant became the legal owner of one-half, and the said Lincoln became the owner of the remaining half of said schooner, and said schooner was duly registered according to the act of Congress in such case made and provided, as belonging, one-half to the libellant and one-half to said Lincoln.

That upon such purchase being made, as aforesaid, and before sailing from Boston, the said schooner was thoroughly repaired at an expense of about \$1,000, and fitted for a three years' voyage, which said expense was wholly supplied by the libellant; and to secure the libellant for the one-half of such expense, and for one-half of said note, for a part of the said purchase money, and for one-half of any loss that might arise on her voyage from Boston to Galveston, hereinafter mentioned, the said Dawson Lincoln, on or about the twenty-first day of December, 1846, executed to the libellant a bill of sale of his one-half of said schooner, a copy whereof is hereto annexed, marked B. That such schooner was, at that time, six years old, in excellent condition, and worth at least the sum of \$3,500.

Fourth. That the libellant purchased and supplied, from his own means, a cargo on joint account with the said Dawson Lincoln, who was then appointed

master of said schooner, and with said cargo, and a freight of about \$160, the said schooner sailed from the port of Boston, on or about the twenty-sixth day of December last past, with the said Lincoln as captain, bound to Galveston, Texas, where she arrived on or about the twenty-seventh day of January last past, in excellent order and condition, and discharged her cargo, and received a full freight at Galveston, for the mouth of the Rio Grande, where she arrived on or about the latter part of February last, and discharged her cargo, for which the said Captain Lincoln received the freight, amounting, as the libellant has been informed and believes, to more than \$500. That while said schooner was so at the Rio Grande, in the early part of March last, she was chartered by the Government of the United States for the sum of \$1,200 a month, and proceeded to Vera Cruz, and lay at or near Sacrificios, and the said Lincoln received from the said Government, the sum of about \$1,500 and upwards on account of such charter; that on or about the second day of April last, the said Captain Lincoln wrote in substance, from Vera Cruz to the libellant, that the first month's charter of said schooner, amounting to \$1,200, would be due on the tenth day of April, and that he would remit that amount, together with \$400, freight and proceeds of cargo sold by him to the agent of the libellant, at Salem, but the said Lincoln wholly failed to make any remittance whatever, and the libellant is credibly informed, and believes and states that the said Captain Lincoln, after his arrival at Vera Cruz, in neglect of his duty as master of said schooner, and of the interest of the libellant, embarked largely in the business of purchasing wrecked vessels on the shore, and in getting them off, without the authority or knowledge of the libellant, and had, some time before the said schooner ran on shore, as hereinafter mentioned, actually purchased a brig for about \$1,600, stranded on the shore, and a barque for about \$800, also stranded on the shore, and was busily engaged in getting them off, up to the time the said schooner went ashore. That no remittance whatever having been at any time made by the said Captain Lincoln to the libellant or his agent, no reasonable doubt can exist that the said Lincoln, who was a man of little or no means, converted the proceeds of the cargo, freights, and charter, or the greater part thereof, received by him, amounting to at least \$1,600, to purchase of said wrecks.

Fifth. That on or about Sunday, the second day of May last, the said Captain Lincoln left the said schooner anchored at or near Sacrificios, with only the mate on board, and with all of the crew of the said schooner, went some ten miles down the coast in the schooner's boat, for the purpose of wrecking, and while so absent, a squall from the northward came up in the early part of the day, and parted one of the schooner's chains, and was driving her towards the shore directly on some old wrecks, when the mate, finding that she continued dragging her remaining anchor, and that she would inevitably go ashore in the vicinity of the old wrecks, slipped the remaining chain, and succeeded in running her on a smooth, clear beach, sustaining no injury to said schooner, except the loss of a few sheets of copper from her bottom, and although the said Lincoln returned with his crew from the wrecking expedition on the evening of

the same day, he allowed said schooner to remain ashore, although only slightly grounded, from Sunday until the Friday following, without making an effort to relieve her, although she was uninjured, and could have been easily hove off at a very trifling expense, and although he had a sufficient chain and anchor convenient, on board of the brig he had purchased, to enable him to get her off, and although he could have applied the said moneys in his hands, or could have raised money on the said brig or barque, or by bottomry on said schooner, more than sufficient to meet his expenses in getting her off. That on the said Friday, as the libellant is informed and believes, the said Captain Lincoln called a survey, and on the following day (Saturday), exposed said schooner for sale at auction, and after considerable competition at said sale, the said Rogers bid her in at such sale, at the sum of \$1,750, and now alleges that he thereby became the legal owner of said schooner, and the libellant is informed and believes that the said Lincoln authorized and requested a person to bid for him, said Lincoln, at said auction sale, the sum of \$1,700, or about that sum, for said schooner, if she could not be purchased at a less sum; and the libellant states that no necessity existed for said sale, and that the same was fraudulent, collusive, illegal, and void, and conferred no title whatever on the said Rogers. That on or about the third day after the alleged purchase at said sale, the said Rogers hove off the said schooner, with anchors and chains, at a very trifling expense, not to exceed, as the libellant believes, the sum of \$50 or \$100, and when so hove off, the said schooner had sustained no damage in her hull, spars, sails, rigging, or otherwise, except the loss of a few sheets of copper off her bottom, and a little caulking necessary on her wales, and a chain and anchor. That being supplied with this slight amount of caulking, and one chain and anchor, she proceeded in a few days thereafter, without any other repairs, to New Orleans, a distance of about 800 or 1000 miles, and there took in a full cargo of corn and proceeded to New York, where she arrived in safety after a quick passage of fourteen days in a good and sound condition, on or about the sixth day of August, instant, without receiving any repairs except as aforesaid. That a full cargo of corn, from its dense weight, and liability to shift and great strain in a vessel could not be brought, and would not be entrusted in any vessel except she were sound, staunch, and in good condition, and that, as the libellant is informed and believes, the said Rogers now values said schooner, at the sum of \$3,500, and the libellant states that it must have been quite apparent to the said Rogers and to the said Lincoln, at the time of said pretended auction sale, that said schooner was in no peril or danger, and no necessity existed for her sale, and that she could have been easily got off, as the one bid the sum of \$1,750, and the other authorized a bid of \$1,700 for said schooner (50 per cent of her value when safely in port), which bids would not have been made, had any real necessity for a sale existed.

Sixth. That after the said sale the said Lincoln continued his business of wrecking at Vera Cruz as aforesaid, and got off the said barque purchased by

him, and, as the libellant is informed and believes, also purchased another stranded vessel and got her off. That the said Lincoln retained the entire proceeds of said auction sale, as well as the said moneys so received, as aforesaid, from the sale of cargo, freight, and charter, amounting together to at least the sum of \$3,300, no part of which has ever been received by the libellant, or by any person for his account, although he has paid for the whole of said outfits at Boston, and has paid said note so given by said Lincoln on account of the purchase money of one-half of said schooner, and has paid insurance and other running expenses of said schooner to the amount of about \$300.

That the cargo shipped on joint account as aforesaid will barely reimburse the libellant for its cost, freight, and expenses, and no profit has or will be made thereon, and that the only freight received by the libellant since said schooner left Boston, in December, 1846, was about the sum of \$60 received at Galveston on account of freight, which sum was credited to the schooner, and the balance of said freight from Boston, being the sum of \$100, was received by said Lincoln for his family.

Seventh. That the libellant first heard of his schooner being ashore on or about the twenty-fifth day of May last, while he was at New Orleans, but he was in so critical a state of health that he was unable to go to Vera Cruz to look after his interests, and had to leave for the north on account of his bad health on or about the third day of June last, and that up to the time of leaving for the north as aforesaid, he had not received any letter, information, or communication whatever from the said Captain Lincoln, except the said letter of the second day of April, hereinbefore mentioned. That the said Captain Lincoln died at Vera Cruz on about the 17th day of July last.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said schooner *Lucinda Snow*, her tackle, apparel, and furniture, and that the said *Stubbs and Rogers*, and all other persons having any interest in said schooner, may be cited to appear before this Honorable Court, and to show cause why possession of the said schooner should not be delivered to the libellant as having full title to the possession thereof, against the said *Stubbs and Rogers*, and that this Honorable Court would be pleased to decree the said schooner to be delivered to the libellant, and that the said *Stubbs and Rogers* may be decreed to pay unto the libellant all freight and freights earned by said schooner while in their possession, or in the possession of either of them, with damages and costs, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

ALFRED PEABODY.

Sworn, &c., before me,

JAS. W. METCALF, Clerk.

MARTIN STRONG & A. F. SMITH, Proctors.

A. F. SMITH, Advocate.

No. 80. — **LIBEL IN REM BY A MINORITY OWNER TO OBTAIN SECURITY FOR THE RETURN OF A VESSEL, OR FOR A SALE.**

To the Honorable Samuel R. Betts, District Judge of the United States for the Southern District of New York.

The libel of A. B., of the city of New York, part owner of the brig Packet, against the said brig, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, and especially against C. D., part owner of said brig, in a cause of possession, civil and maritime, alleges as follows:

First. That the libellant is the true and lawful owner of one-quarter of the brig Packet, of the burthen of 200 tons, her tackle, apparel, and furniture, and boats, and the said C. D. is owner of the remaining three-quarters of said brig, and no other person is owner of said vessel or any portion thereof, and the said brig is now lying in the port of Hudson, in the Southern District of New York.

Second. That the said C. D. has hitherto acted as ship's husband of said vessel, and has now the possession thereof, and declares his intention of dispatching said vessel on a sealing voyage to the Pacific Ocean. That the libellant has expressed to said C. D. his dissent from said voyage, and has remonstrated with him on the subject, and still dissents from the same, but the said C. D. persists in his determination to send her on said voyage, and is now procuring her outfit and crew.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, furniture, and boats, and that all persons claiming any right in said vessel, and especially the said C. D., three-quarters owner as aforesaid, may be cited to appear and answer the matters aforesaid, and to show causes why the said C. D. should not be restrained from sending the said vessel on the said voyage until good and sufficient security shall be given in this court to the full value of the libellant's interest in said vessel, her tackle, apparel, furniture, and boats, for the safe return of said vessel to the said port of Hudson, where she belongs, and that this Honorable Court will be pleased to decree that such security be given or the possession of said vessel, her tackle, &c., be delivered to the libellant, with costs, or that the said vessel, her tackle, &c., may be sold under the direction of this Honorable Court, and the proceeds of such sale brought into this court, to be divided according to law; and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

A. B.

Sworn, &c., before me,

J. W. NELSON, U. S. Commissioner.

E. J., Proctor.

T. H., Advocate.

No. 81. — A LIBEL IN REM BY A PART OWNER FOR A SALE OF THE VESSEL.

[*Address and statement of parties as in the last precedent — then proceed*] — in a cause of licitation or partition, alleges as follows :

First. That he is two-fifths owner of the brigantine Red Rover, her tackle, apparel, furniture, and boats ; that C. D. is owner of two-fifths and E. F. is owner of one-fifth, and is also master of said vessel, and she is now in the port of New York.

Second. That in consequence of diversity of opinion and interest in relation to the employment of said vessel, which is irreconcilable, the said owners are unable to agree upon any voyage or business for said vessel. That the libellant has named a reasonable price for said vessel, at which he is willing to sell his share, or buy the shares of his co-owners, but they refuse either to buy or sell, and, in consequence of their impracticability and obstinacy, he is unable to sell to any other person.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said brigantine, her tackle, apparel, furniture and boats, and that all persons claiming any right in said vessel, and especially the said C. D. and E. F., part owners and master as aforesaid, may be cited to appear and answer the matters aforesaid, and that the said vessel, her tackle, &c., may be sold under the direction of this Honorable Court, and the proceeds thereof brought into court to be divided and distributed according to law, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

A. B.

Sworn, &c., before me,

CHAS. W. NEWTON, U. S. Commissioner.

E. B., Proctor.

A. S., Advocate.

No. 82 — LIBEL IN REM AGAINST A DOMESTIC VESSEL BY A SHIP JOINER FOR LABOR AND MATERIALS — TO ENFORCE A STATE LIEN.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York :

The libel of William Robinson, of said district, ship joiner, against the barque Richard Alsop (whereof now is or late was master), her tackle, apparel, and furniture, and against all persons intervening for their interest in said barque, in a cause of contract, civil and maritime, alleges as follows :

First. That the said barque Richard Alsop, is a domestic ship, and is now

owned, or was, at the time hereinafter mentioned, owned by some persons who are resident in the State of New York, who are to the libellant unknown, but who, as he is informed and believes, reside in the city of New York.

Second. That the said barque, in the month of July last, being in the port of New York, in the district aforesaid, the libellant furnished certain materials and performed certain labor as a ship joiner (the particulars of which are mentioned and set forth in the schedule hereto annexed), towards the altering, equipping, and finishing the said barque, at the request of the said master, and at the prices in the said schedule mentioned. That the charges in said account are just and reasonable, and that said materials furnished, and such labor done upon the said vessel, were necessary and proper, to the altering, equipping, and finishing the said barque.

Third. That the said labor was performed upon the said vessel, and that said materials so furnished, have gone into the said barque, and have become part thereof — and that the said repairs done, labor performed, and materials furnished, amount to the sum of one hundred and eighty-eight dollars and seventy-nine cents, and that the labor was done and materials furnished upon the credit of said vessel, as well as of the master and owners thereof.

Fourth. That the amount due for said labor performed upon the said vessel, and such materials furnished to her, is by the law of the State of New York, a lien upon the said vessel, her tackle, apparel, and furniture, — and the said vessel is now in the Southern District of New York.

Fifth. That the libellant has repeatedly requested the said master to pay him the said sum of one hundred and eighty-eight dollars and seventy-nine cents, but that the said master has not paid the same, and still neglects and refuses so to do, and that the said sum now remains entirely due and unpaid.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays, that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said barque, her tackle, apparel, and furniture; and that the said master, and all persons claiming any right, title, or interest in the said barque, may be cited to appear and answer upon oath all and singular, the matters aforesaid, and that the said vessel may be condemned and sold to pay the amount due to the libellant, with interest and costs, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

WILLIAM ROBINSON.

Sworn &c.,

BURR & BENEDICT, Proctors.

E. BURR, Advocate.

SCHEDULE.

(A copy of the bill of items.)

No. 83. — **LIBEL IN PERSONAM BY A SHIP CHANDLER AGAINST THE OWNER FOR SUPPLIES — WITH ATTACHMENT CLAUSE.**

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of George W. Quintard, of said district, late ship chandler, against Peter S. J. Talbot, now or late owner of the schooner *Mary*, in a cause of contract, civil and maritime, alleges as follows :

First. That in the month of June, one thousand eight hundred and forty-seven, said schooner then being owned by the said Peter S. J. Talbot, and lying in the port of New York, and under the command of one Captain Chase, and standing in need of provisions and stores — the libellant, at the request of the said master, furnished to and for the use of the said schooner, the provisions and stores contained in the schedule hereto annexed, amounting to the sum of sixty-eight dollars thirty-five cents, and that the same were furnished at the prices in said schedule stated.

Second. That said stores were necessary to enable said schooner to perform her intended voyage or voyages, and were furnished on the credit of the said schooner, as well as of the master and owners thereof.

Third. That the said owners have been requested to pay the said bill, but have hitherto wholly neglected and refused to pay the same, and the sum of seventy-three dollars and thirteen cents, including interest, is now justly due and owing to the libellant for the same.

Fourth. That the libellant has been informed and believes that the respondent has credits and effects in the hands of Brett & Vose, of the city of New York.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays, that a warrant of arrest may issue against the said Peter S. J. Talbot, and in case he cannot be found, then that his goods and chattels be attached to the amount sued for ; and if sufficient goods and chattels cannot be found, then that his credits and effects be attached in the hands of Brett & Vose, garnishees ; and that he may be required to answer all the matters aforesaid ; and that this Honorable Court would be pleased to decree the payment of the amount due to your libellant, as aforesaid, with costs, and that he may have such other and further relief in the premises as in law and justice he may be entitled to receive.

GEORGE W. QUINTARD.

Sworn before me,
this 23d Sept. 1848,

J. W. NELSON, U. S. Com'r.

BURR & BENEDICT, Proctors.

E. BURR, Advocate.

SCHEDULE.

(A copy of the bill of items.)

No. 84. — LIBEL IN REM AGAINST A STEAMBOAT FOR REPAIRS AND WHARFAGE.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Maelzaer Howell, and Joseph E. Coffee, of the city of New York, manufacturers, and doing business as copartners in the said city under the name and style of Howell & Coffee, against the steamboat Fanny, whereof J. Latson is now or late was master, her tackle, apparel, and furniture, and also against all persons intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows:

First. The said steamboat or vessel Fanny, of the burthen of about one hundred tons, belonging to the port of New York, and for some time past and now lying in the port of New York, and being in need of repairs, the said libellants furnished necessary materials for said steamboat or vessel, and did necessary work and labor upon the same to make her seaworthy, which said materials, and work and labor, are particularly mentioned in a schedule hereunto annexed, that the same materials furnished, and work and labor done and performed by these libellants, amount to sixty-seven dollars and forty-five cents, and also said libellants furnished a berth for said steamboat to lie at one of the wharves of the said city of New York, the wharfage whereof amounts to thirty-six dollars, and that all of said materials furnished, and work and labor done and performed upon said steamboat or vessel, and said berth or wharfage were necessary for said steamboat or vessel, and that said work, labor, and wharfage together amount to \$113.45.

Second. That the master of said steamboat or vessel, and her owners, have never yet paid to these libellants said sums of money, or either of them, or any part thereof, but have hitherto wholly neglected and refused so to do, and said steamboat is now in the Southern District of New York.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Whereupon these libellants pray, that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said steamboat Fanny, her tackle, apparel, and furniture, that all persons claiming any right, title, or interest in the said steamboat or vessel, may be cited to appear and answer, on oath, all and singular, the matters aforesaid, and that the said steamboat may be condemned and sold to pay the demands and claims aforesaid, with interest and costs, and that the libellant may have such other and further relief as in law and justice he may be entitled to demand.

Sworn, &c.,

D. E. WHEELER, Proctor.

J. Q. MORTON, Advocate.

JOSEPH E. COFFEE,

One of the firm of Howell & Coffee.

SCHEDULE.

(A copy of the bill of items.)

NO. 85. — A LIBEL IN REM AGAINST THE SHIP AND FREIGHT FOR MONETYS
ADVANCED TO PAY REPAIRS.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Hiram Benner of Key West, in the territory of Florida, merchant, against the brig Joseph Gorham, of the port of Charleston, in the State of South Carolina, now lying in the port of New York (whereof John Williams now is, or late was, master), her tackle, apparel, furniture, and freight, and also against all persons lawfully intervening for their interest in the said brig, in a cause of contract, civil and maritime, alleges as follows :

First. That the said brig Joseph Gorham, of the burthen of one hundred and forty-six tons, or thereabouts, is now owned, and was at the time hereinafter mentioned owned, by some persons resident out of the State of New York, who are to the libellant unknown, but one of whom, as he is informed and believes, resides in the State of South Carolina, and the others in the State of Connecticut, and that the said brig belongs to the port of Charleston in the said State of South Carolina.

Second. That the said brig, sometime in the early part of June last, sailed from the said port of Charleston, bound to the said port of Key West, under the command of the said John Williams as master. And that in the course of the said voyage, and sometime on or about the twentieth day of June last, the said brig got on shore on the Florida Reef, and suffered great damage. That the said brig was subsequently got off and carried into Key West, where it was found that it was necessary that she should undergo a course of thorough and expensive repairs, and be furnished with certain supplies, in order to render her seaworthy and fit to go to sea.

Third. That the said John Williams, master as aforesaid, accordingly went on and repaired said brig, and purchased said supplies, and that the expenses of such repairs and supplies necessarily amounted to about twenty-one hundred dollars. That the said master, not having the funds to pay for the said repairs and supplies, applied to this libellant at Key West aforesaid, for a loan of part of the amount necessary for that purpose. And that this libellant accordingly advanced to the said John Williams, for the use of the said brig, and on her credit and that of her said master and owners, on the eighth day of July last, the sum of sixteen hundred and six dollars and seventy-five cents, to be repaid to this libellant on the arrival of the said brig at New York (to which port she was destined from Key West aforesaid), and that the sum of sixteen hundred and six dollars and seventy-five cents was applied by the said John Williams towards payment of the said repairs and supplies.

Fourth. That shortly after the making of the said advance by this libellant, the said brig sailed from Key West for the port of New York, where she arrived some two or three days since. That after her arrival at the said port of New York, this libellant applied to the said John Williams, master as aforesaid,

for repayment of the said amount so advanced by him as aforesaid, which the said master declined, on the ground that he was utterly unable so to do. And that the said brig has now been taken possession of by one of her said owners, who refuses to recognize the said debt, or make any provision therefor, to the damage of this libellant of the full sum of sixteen hundred and six dollars and seventy-five cents.

Fifth. That the said brig, on her said voyage from Key West to New York, brought a cargo on freight, the whole or the greater part of which is now on board of the said brig, and the freight whereof is still uncollected.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court. Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said brig, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein, may be cited to appear and to answer, upon oath, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the amount so due to the libellant, with costs, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

WILLIAM BENNER.

Sworn, &c.,

GRIFFIN & HAVENS,

Proctors for Libellant.

GEORGE GRIFFIN,

Advocate for Libellant.

NO. 86. — A LIBEL IN PERSONAM AGAINST THE OWNERS FOR SUPPLIES ORDERED
BY THE MASTER IN A FOREIGN PORT.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Simeon H. Lewis, and John C. Clapp, of Boston, in the State of Massachusetts, grocers, against Gilbert Hatfield, and James T. Bertine, now or late owners of the brig or vessel called the *Gulielma*, of New York, in a cause of contract, civil and maritime, alleges as follows:

First. That at various times during the year eighteen hundred and forty-one, the said brig *Gulielma*, then under the command of Richard Smith, and owned by the said Gilbert Hatfield, and James F. Bertine, was lying at Boston aforesaid, and standing in need of stores, provisions, and other necessities, to enable her to perform her intended voyage or voyages, and the libellants, at the request of the said master of the said brig, did furnish to and for the use of the said brig, provisions, stores, and other necessities, to enable said brig to perform her said intended voyage or voyages, to the amount of

four hundred and twenty-five dollars and five cents, which said bill is hereunto annexed, signed, and approved by the said master; and the said provisions, stores, and other necessities were furnished on the credit of the said brig, and the master and owners thereof.

Second. That the libellants have repeatedly requested the said master and the said owners to pay them the said sum of money so due the libellants, for the provisions, stores, and other necessities so furnished as aforesaid, but that the said master and owners have hitherto neglected and refused to pay the same, and still neglect and refuse so to do. And that the sum of one hundred and sixty-nine dollars and five cents, with the interest, are still due to the libellant over and above all payments and deductions.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellants pray that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said Gilbert Hatfield, and James F. Bertine, owners as aforesaid, and that they may be required to answer, on oath, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the amount due as aforesaid, with interest and costs, and that the libellants may have such other and further relief as in law and justice they are entitled to receive.

SIMEON H. LEWIS,

JOHN CLAPP,

By the Attorney in fact,

A. B.

BURR & BENEDICT, Proctors.

E. C. BENEDICT, Advocate.

NO. 87. — JURAT BY AN ATTORNEY IN FACT.

Southern District of New York, ss.

A. B., of said district, being duly sworn, says that he is the attorney in fact for the libellants above named, who reside in Boston, and that the foregoing libel is true, according to his best knowledge and belief.

A. B.

Sworn before me,

J. W. NELSON, U. S. Commissioner.

SCHEDULE.

(*A copy of the bill of items.*)

NO. 88. — A LIBEL IN PERSONAM BY A BUTCHER AGAINST THE OWNERS OF A PASSENGER BOAT ON THE HUDSON RIVER FOR SUPPLIES OF MEAT FROM DAY TO DAY.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States in and for the Southern District of New York.

The libel of James McCur, of the city of New York, butcher, against An-cram Livingston, and Charles H. Hedges, owners of the steamboat Hudson, in a cause of contract, civil and maritime, alleges as follows :

First. That during the months of January, February, March, April, May, June, and July, of the year one thousand eight hundred and forty-six, the said steamboat, whereof the said Livingston and Hedges, were owners, being a passenger steamboat, and engaged in making trips on the Hudson river, to and from the ports of New York and Hudson, this libellant did furnish meats from time to time to said steamboat, at the request of the master thereof, a full account of which is contained in the schedule hereunto annexed, amounting in the whole to the sum of one hundred and eighty-eight dollars and fifteen cents, over and above all credits.

Second. That the said meats were furnished for the use of said steamboat, for the daily consumption of her passengers, officers, and crew, and were necessary to enable her properly to make her said trips and earn passage money.

Third. That although often requested, the said owners have not paid the said amount, nor any part thereof, to this libellant, and that the same is now justly due him.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that a warrant of arrest, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said defendants, and that they may be required to answer, on oath, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the amount so due to the libellants, with costs, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

J. McCUR.

Sworn before me this day
of December, 1847,

JOHN W. NELSON, U. S. Commissioner.

BURR & BENEDICT, Proctors.

E. C. BENEDICT, Advocate.

SCHEDULE.

(Copy bill of items.)

No. 89. — AFFIDAVIT TO OBTAIN SUMMONS.

Brig Lowell, Captain Wm. Lawrence, and Owners,

TO BERNARD GLANCY, DR.

To wages as second mate, from July 10, 1843, to January 20,

1844, at \$20 a month,

\$126 66

<i>Brought forward,</i>		\$126 66
CREDIT.		
By one month's advance, ...	\$20 00	
Cash in Gibraltar, ...	15 00	
Cash in Messina, ...	30 00	
Hospital money, 6 months, ...	1 20	
		66 20
Balance due, ...	\$60 46	

Southern District of New York, ss.

Bernard Glancy, late mariner on board the brig Lowell, being duly sworn says— That in July, 1843, he shipped on board brig Lowell, whereof William Lawrence was, and still is, master, then lying in the port of New York, as second mate (*or ordinary seaman, or mate, or cook, as the case may be*), at the wages of twenty dollars a month, to perform a voyage to one or more ports in the Mediterranean, and back to the United States, and signed the usual shipping articles for said voyage, which are retained by the said master. That the deponent performed said voyage, and in all respects did his duty as such second mate, till the arrival of said vessel in the port of Palermo, where, without cause, he was turned ashore from said vessel by the said master, and prevented from performing the remainder of the voyage. That he returned to the United States as passenger in another vessel, and said brig Lowell arrived at the port of New York, on the 20th day of January, instant, where she now is. That there is now due to him, for his wages on said voyage, a balance of sixty dollars and upwards, as shown by the above schedule, which is just and true, which balance the said master has refused to pay.

BERNARD GLANCY.

Sworn, January 30, 1844,
before me,

GEORGE W. MORTON, U. S. Commissioner.

(*Or Justice of the Peace, or District Judge,
as the case may be.*)

NO. 90. — PRELIMINARY SUMMONS FOR SEAMAN'S WAGES.

To the Masters and Owners of the Brig Lowell.

I, George W. Morton, United States Commissioner, do hereby summon you to be and appear before me, at my office, at the United States Courts, in the City Hall, in the city of New York, on the thirty-first day of January, instant, at ten o'clock in the forenoon of that day, then and there to show cause, if any you have, why process of attachment should not issue from the District Court of this District against the brig Lowell, her tackle, apparel, and furniture, according to the course of Admiralty Courts, to answer the claim of Bernard Glancy, for mariner's wages.

Given under my hand, this thirtieth day of January, in the year of our Lord one thousand eight hundred and forty-five.

GEO. W. MORTON, U. S. Commissioner.

BURR & BENEDICT, Proctors.

No. 91. — AFFIDAVIT OF SERVICE OF THE SUMMONS.

Southern District of New York, ss.

John C. Magrath, of the city of New York, clerk, being duly sworn, says — That on the thirteenth day of January, instant, he served the summons, of which the within is a copy, by delivering the same to the master of the brig Lowell, therein named. (Or by leaving the same on board the brig Lowell, within named, with the persons in charge thereof, the master being absent. Or, by fastening the same in a conspicuous place on the mast of said vessel, no person being on board in charge thereof).

J. C. MAGRATH.

Sworn, January 31, 1844,
before me,

GEO. W. MORTON, U. S. Commissioner.

No. 92. — CERTIFICATE OF THE MAGISTRATE.

I hereby certify to the Clerk of the District Court for the Southern District of New York, that there is sufficient cause of complaint whereon to found Admiralty Process against the brig Lowell, her tackle, apparel, and furniture, to answer for the wages of Bernard Glancy.

January 31, 1844.

GEORGE W. MORTON, U. S. Commissioner.

No. 93. — LIBEL IN REM FOR SEAMAN'S WAGES, AFTER PRELIMINARY SUMMONS BEFORE A MAGISTRATE.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Bernard Glancy, mariner, formerly second mate of the brig Lowell, whereof Wm. Lawrence then was and is master, against the said brig Lowell, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of wages, civil and maritime, alleges as follows:

First. That some time in the month of July, one thousand eight hundred and forty-three, the said vessel being in the port of New York, and bound on

a voyage thence to one or more ports in the Mediterranean Sea, and back to the United States, the said master, by himself or his agent, did ship and hire the libellant to serve as second mate on board the said vessel, for the said voyage, at the wages of twenty dollars per month. That, for the due performance of the said voyage, the libellant signed shipping articles, which are now in the possession, or under the control of the said master, and which the libellant prays may be produced to this Honorable Court, for further certainty in the premises, and for the benefit of the libellant; and that, in pursuance of the said agreement, the libellant entered into the service of the said brig, as such second mate, on or about the tenth day of the month of July, in the year aforesaid.

Second. That the said brig having taken on board a cargo, proceeded therewith, and with the libellant on board, for the port of Gibraltar, where she safely arrived, and discharged her cargo, and made freight. That she proceeded thence to Sardinia with certain specie on board, where she safely arrived; and that she proceeded thence to Messina, where she safely arrived, and discharged the said specie, and having taken on board another cargo, she proceeded therewith, and with the libellant on board, for the port of Palermo, where she safely arrived, and where she completed her cargo.

Third. That while the said vessel was lying at Palermo aforesaid, on the tenth day of December, 1843, the said master unjustly, and without any cause, and without the consent of the libellant, and against his will, turned him on shore, and would not permit him to perform the remainder of the voyage, and the said brig completed said voyage, and arrived at the port of New York, on the twenty-ninth day of January, 1844, where she now is.

Fourth. That during the whole time the libellant was on board the said brig, to wit, from the time of his entering on board thereof, to the time of his discharge therefrom, he well and faithfully performed his duty as such second mate, and was obedient to all lawful commands of the said master, as the master of the said brig, whereby he became entitled to demand wages for the whole voyage of said vessel, till her return to the United States; and at the time of his arrival in New York, there was due to him the sum of sixty dollars and upwards, over and above all just deductions.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said brig Lowell, her tackle, apparel, and furniture, and that all persons claiming any right or interest therein, may be cited to appear and answer all and singular, the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of wages aforesaid, with costs, and that the said vessel may be condemned and sold to pay

the same; and that the libellant may have such other and further relief in the premises, as in law and justice he may be entitled to receive.

BERNARD GLANCY.

Sworn, January 30, 1844,

before me,

GEORGE W. MORTON,

U. S. Commissioner.

BURR & BENEDICT, Proctors for Libellant.

BURR, Advocate.

NO. 94. — LIBEL IN REM BY A SEAMAN FOR WAGES WHEN THE VESSEL HAS LEFT THE PORT WHERE HIS VOYAGE ENDED — OR IS ABOUT TO LEAVE — IN WHICH CASES IMMEDIATE PROCESS MAY ISSUE WITHOUT A SUMMONS.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of John Graham, of said district, late seaman on board the schooner *State Rights*, whereof Sylvanus Cummings now is, or lately was, master, against the said schooner, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest in said schooner, in a cause of wages, civil and maritime, alleges as follows:

First. That, some time in the month of January last, said schooner, then lying in the port of Charleston, and bound on a voyage thence to Murfreesborough, in North Carolina and back, the said master, by himself or his agent, hired the libellant to serve as seaman on board the said vessel, during the said voyage, at the wages of sixteen dollars per month, by verbal agreement, the libellant having signed no shipping articles. That in pursuance of said agreement, the libellant entered on board and into the service of the said ship as such seaman, on or about the twenty-ninth day of the said month of January.

Second. That the said schooner having taken on board a cargo, proceeded therewith, and with the libellant on board, for Murfreesborough, where she safely arrived, and discharged her cargo, and made freight. That having taken on board another cargo, she proceeded therewith, and with the libellant on board, for the port of Charleston, where she safely arrived, and discharged her cargo, and made freight, and her voyage ended.

Third. That at the request of said master, the libellant continued on board the said schooner, at the wages aforesaid, and the said schooner having taken on board another cargo, proceeded therewith, and with the libellant on board, for the port of Jericho, in the State of Georgia, where she safely arrived, and discharged cargo, and made freight. That having taken on board a cargo of live oak, she proceeded therewith, and with the libellant on board, for the port of Norfolk, where she safely arrived, and discharged a portion of her cargo, and made freight. That she proceeded from thence with the residue of

her cargo, and the libellant on board, for the port of Philadelphia, where she safely arrived, and discharged her cargo, and made freight. That having taken on board another cargo, she proceeded therewith, and with the libellant on board, for the port of New York, where she safely arrived, and the libellant was duly discharged, on the seventh day of August last, and the said schooner has since made another voyage.

Fourth. That during the whole time he was on board of said vessel to the time of his discharge therefrom, he well and faithfully performed his duty as such seaman, and was obedient to all lawful commands of the said master, and the other officers of the said schooner, and was entitled to be paid his wages, which were then due, and amounted to the sum of eighty-nine dollars and upwards, over and above all just deductions.

Fifth. That the said schooner has left the port of delivery, where the said voyage ended, without paying to the libellant the balance of wages due to him as aforesaid.

[*Or this, if it be true. —*

Fifth. That the said schooner is about to proceed to sea before the end of ten days next, after the delivery of her cargo or ballast.]

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays, that process in due form of law, according to the course of courts of admiralty, and of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said schooner, her tackle, apparel, and furniture, and that all persons claiming any right, title, or interest therein, may be cited to appear and answer, upon oath, all the matters aforesaid, and that this Honorable Court will be pleased to decree the payment of the wages aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises, as in law and justice he may be entitled to receive.

JOHN GRAHAM.

Sworn, October 5, 1846,
before me,

ALEXANDER GARDINER,

U. S. Commissioner.

BURR & BENEDICT, Proctors.

BURR, Advocate.

NO. 95. — A LIBEL IN REM AND IN PERSONAM BY SEVERAL SEAMEN AGAINST A SHIP, FREIGHT, AND MASTER, FOR WAGES AND SHORT ALLOWANCE OF BREAD.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of John C. Duffie, Alfred Sandford, Alexander Wilson, Benjamin Hoffman, Robert Twiss, and Charles M'Carty, of said district, mariners, late seamen on board the barque Childe Harold, whereof one

Crosby now is, or lately was master, against the said barque, her tackle, apparel, and furniture, and the freight due for her cargo, now or lately laden therein; also, against all persons lawfully intervening for their interest in said vessel, and against

Crosby, master of said vessel, in a cause of wages, civil and maritime, alleges as follows:

First. That some time in the month of November, one thousand eight hundred and forty-four, the barque Childe Harold, whereof the said Crosby was master, then lying in the port of New York, and bound on a voyage from the said port of New York, to one or more ports in South America, and back to a port of discharge in the United States; the said master, by himself or his agent, hired the libellants, the said Duffie, Hoffman, Wilson, Sandford, M'Carthy, and Twiss, to serve as seamen, and the libellant, Howland, to serve as an ordinary seaman, on board said vessel, for and during the voyage, at and after the rate of wages of eleven dollars per month to each of the libellants, except the libellant Howland, who was to receive the wages of seven dollars per month. That, for the due performance of the said voyage, the libellants signed shipping articles, which are now in the possession or under the control of the master or owners of the said vessel, and which the libellants pray may be produced to this Honorable Court, for further certainty in the premises, and for the benefit of the libellants. That in pursuance of the said agreement, the libellants entered into the service of the said vessel as such seamen as aforesaid, on or about the thirteenth day of the month of November, in the year aforesaid.

Second. That the said vessel having taken on board a cargo, proceeded therewith, and with the libellants on board, for the port of Callao, where she safely arrived, and delivered her cargo, and made freight. That the said vessel having taken ballast on board, proceeded therewith, and with the libellants on board, for the port of Aquico, where she safely arrived. That having there taken on board a cargo, she proceeded therewith, and with the libellants on board, for the port of Arica, where she safely arrived, and where she took on board some additional cargo, and proceeded to the port of New York, where she safely arrived, on or about the fourth day of October instant, where she now is, and where, since the arrival of the said vessel, the libellants have all been duly discharged from the service thereof.

Third. That during the voyage from New York to Callao, and for about one month and a half, the libellants were on a short allowance of good and wholesome ship bread, the bread which was furnished to the libellants being mouldy, rotten, and wormy, and unfit to be eaten; and that during all the voyage from the port of Callao to Aquico, and from thence till the return of the vessel to this port, and for the period of about six months and a half, they were on a short allowance of good and wholesome ship bread (the bread that was fur-

nished to the libellants being of the same description as that furnished for their use on the passage to Callao), the said master having neglected to put on board the requisite quantity of provisions for the said voyage, according to the act of Congress in such case made and provided.

Fourth. That during the whole time the libellants were on board the said vessel, they well and faithfully performed their duty as such seamen, as aforesaid, and were obedient to all lawful commands of the said master and the other officers of the vessel, whereby and by reason of being put on such short allowance as aforesaid, they became entitled to demand from the said vessel as follows: — The libellant Duffie, for his wages and short allowance, the sum of one hundred and forty-six dollars and upwards, and each of the libellants Hoffman, Wilson, Sandford, Twiss, and McCarthy, the sum of eighty-eight dollars, and to the libellant, Howland, the sum of fifty-six dollars.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellants pray that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said barque Childe Harold, her tackle, apparel, and furniture, and her freight aforesaid; and that the said Crosby, master of the said vessel, and all persons having any right, title, or interest in said barque, her tackle, apparel, and furniture, may be cited to appear and answer all the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the wages and short allowance aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellants may have such other and further relief in the premises, as in law and justice they may be entitled to receive.

(Signed by the Libellants.)

Sworn, &c.,

BURR & BENEDICT, Proctors for Libellants.

E. BURR, Advocate.

NO. 96. — LIBEL IN REM BY THE SEAMEN OF A CHINESE JUNK FOR WAGES, EXPENSES, AND PASSAGE MONEY HOME.

To the Honorable Samuel R. Betts, District Judge of the United States for the Southern District of New York.

The libel of Hia Sian, Ungti, Lin Cheugsi, Koesing Thiane, Chien Atia, Lim Akeing, Kho per Le, Lip Hap, Sim Agu, Chien Ten Yeng, Lia Lai, Tan Sam Seng, Ungtian Yong, Yer Achin, Lim Ale, Gabun Hap, Chen Asn, Chwa Ackun, Lim tai Cheng, Chia a Soey, Ong a Hiong, Tan a Lak, Chew Ate, Khoto Sun, Ung Aiong, Sio a Chiok, Chinese mariners of the province of Canton, in China, against the Chinese junk Keying, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of wages, civil and maritime, alleges as follows:

First. That they were shipped as mariners at Whampoa, near Canton, in China, in a certain vessel called a Chinese junk, bearing the name Keying, now lying in the port of New York, by one Kellet, who assumed to be the master thereof, for a voyage to Batavia or Singapore, for sugar or opium, and then to Chusan, or any other port, but the voyage was to continue only eight months, after which they were to continue with the ship or not, as they pleased; and whatever port they went to, they were to be sent back to Canton or Whampoa, by the said Kellet, as master of the said vessel, who was to pay all their expenses in such foreign ports. That they were so shipped on the fourteenth day of September last, by a written contract, which was retained by said Kellet.

Second. That they all then entered on board the said junk, and the said junk sailed from Whampoa with them on board as the crew thereof, and they continued on board, working as such crew, until they arrived at New York some time since, and have continued on board of the said junk, as the crew thereof, until the sixth day of September instant, when they left the same.

Third. That the said vessel did not stop at Batavia, nor Singapore, nor procure any cargo of sugar or opium, or other cargo, but they were forced to come in the vessel to this port of New York, and there the voyage appeared to have been for the purpose of exhibiting the junk, its fixtures and crew, as a curiosity, and for hire, by which the said Kellet, and those who have been connected with him, have made large sums of money.

Fourth. That on the voyage they were greatly dissatisfied, and expressed such dissatisfaction to the said Kellet, when they found that they had passed Java and Singapore, but were forced by violence and severity, by blows and stripes, to work the junk on her voyage.

Fifth. That since their arrival at New York, they have become anxious to return home to China, where they have families, and are destitute of all means of support, and of all means of getting home to China, and are unprovided with clothing or necessaries for resisting the weather of the cold climate of this country.

Sixth. That the said junk is now ready for sea, having been lately made ready for that purpose, and is about proceeding on some voyage on the high seas, to these libellants unknown, without providing them with the means of returning home, or of support in the mean time, and they are no longer bound to continue with the said junk.

Seventh. That the monthly wages which they were to receive were at the following rates:—Hia Siang, eleven dollars; Sim Agu and Ungti, each nine dollars; Ling Chensi, Kho Sing Thiam, Lia Lai, Leina Kung, Khor per Le, Lip Hap, Chin ten Yeng, Tam, Sam Seng, Ungtian Yong, Chein a Tai, each eight dollars a month; and Yer a Chin, Lim a Lee, Gobun Hap, Cheva Asa, Chiva Achan, Lim tai Chong, Tan a Lak, Chia Assey, Ong a Hiong, Chien Ate, Khote sun, Ung a Cong, Sio a Chiok, were each to receive six dollars, all which wages were due to them, to be computed from the time of sailing to the sixth day of

September instant, only deducting three months wages in advance paid to each, and the further sum of twelve dollars each, since their arrival here, which was for their expenditure while here; and your libellant, Hia Siang, receiving four months advance wages at Whampoa.

Eighth. That they are severally entitled to wages from the time of their shipping and sailing in the said junk to the last mentioned date; and also to money sufficient to procure a passage back to China, and to support in the meantime, until they can procure such passage, which will cost between one and two hundred dollars for each man.

Ninth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore your libellants pray that process in due form of law, according to the course of this Honorable Court, in causes of admiralty and maritime jurisdiction, may issue against the said vessel the Chinese junk Keying, her tackle, apparel, and furniture, and that all persons claiming any right in said vessel, and especially the said Kellet, may be cited to appear and answer this libel, and all the matter aforesaid, and that the said vessel, her tackle, apparel, and furniture, may be condemned and sold to pay the amount due to the libellants, with interest and costs, and that the libellants may have such other and further relief in the premises, as in law and justice they are entitled to receive.

(Signed,)

Ong Ahiong,

Chew Ati,

Khote Sun,

Ung Aiong,

Sio a Chiok,

Hia Siang,

Ung Ti,

Lin Cheng Li,

Koesing Thiam,

Chien Atai,

Lim Akeing,

Khoper Le,

Lip Hap,

Sim Agu,

Chien ten Yeng,

Lia Lai,

Tam Sam Seng,

Ung tian Yong,

Yea Achin,

Lim Ale,

Gobun Hap,

Chiva Asn,

Chiva Achan,

Limtai Chong,

Tan a La,

Chia Assey.

Sworn Sept. 7th, 1847,

before me,

CHARLES W. MORTON,

U. S. Commissioner.

D. D. LORD, Proctor.

D. LORD, Advocate.

No. 97. — LIBEL IN PERSONAM AGAINST AN OWNER FOR THE TWO MONTHS' EXTRA PAY, PAYABLE TO THE CONSUL ON DISCHARGE.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel and complaint of Thomas Tucker, of said district, late mate, and William Carver, late cook and steward, on board the brig Caroline, whereof Oliver Jenkins, late was master, and Frederick J. Henop, owner, against the said Frederick J. Henop, owner as aforesaid, in a cause of wages, civil and maritime, alleges as follows:

First. That some time in the month of February last past, the said brig, then lying in the port of New York, and bound on a voyage thence to the port of Liverpool, and thence to such ports or places as the master might direct, and back to a port of discharge in the United States, the said master, by himself or his agent, hired the libellant, Thomas Tucker, to serve as mate on board the said brig for and during the said voyage, at and after the rate of wages of thirty dollars per month; and the libellant, William Carver, as cook and steward, for said voyage, at and after the rate of wages of twenty dollars per month. And that for the due performance of the said voyage the libellants signed shipping articles, which the libellants pray may be produced to this Honorable Court by the said owner, for further certainty in the premises, and for the benefit of the libellants. And that in pursuance of the said contract the libellants entered into the service of the said brig as aforesaid, on the seventeenth day of the said month of February.

Second. That the said brig having taken on board a cargo, proceeded therewith, and with the libellants on board, for the port of Liverpool, where she safely arrived, and delivered her cargo, and made freight. That having taken on board another cargo of divers goods and merchandise, she proceeded therewith, and with the libellants on board, for the port of New York. That the said brig leaked badly soon after leaving the said port of Liverpool, whereupon the said master put into the Cove of Cork, where the said vessel was sold, and the libellant, Thomas Tucker, was discharged from the said brig by the said master, and he proceeded thence to Liverpool, where he entered as a passenger, without wages, on board the ship Europe, bound for New York, where he arrived on the second day of June, instant. And your libellant, William Carver, was also discharged by the said master, and returned to the port of New York in the barque Governor Douglas, where he arrived on the said second day of June instant.

Third. That said brig was an American vessel, in the merchant service, and owned by a citizen or citizens of the United States, and that the libellants were described in the crew list of said brig as American seamen.

Fourth. That at the time the libellants were discharged from the said brig the said master did not pay into the hands of the libellants, nor into the hands of the American consul at that port, nor into the hands of any other person for the use of the libellants, the three months' extra pay, by the act of Congress in such case made and provided, directed to be paid to a seaman in an American vessel on his discharge in a foreign port.

Fifth. That libellants are each entitled to demand from the owner of the said brig such two months' extra pay; your libellant, Thomas Tucker, the sum

of sixty dollars, and your libellant, William Carver, the sum of forty dollars.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court, in causes of admiralty and maritime jurisdiction, may issue against said Frederick J. Henop, owner as aforesaid, that he may be compelled to answer all the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the extra wages aforesaid, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

THOMAS TUCKER,
his
WILLIAM X CARVER.
mark.

Sworn, &c.,
BURR & BENEDICT, Proctors.
E. BURR, Advocate.

NO. 98. — A LIBEL IN REM BY THE PILOT OF A PROPELLER ENGAGED IN TOWING ON THE HUDSON RIVER, THE CHAMPLAIN CANAL, AND LAKE CHAMPLAIN, FOR WAGES.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of George Mygatt, of said district, mariner, against the steam propeller Pilot, whereof David Farr now is, or late was, master, her engine, tackle, apparel, and furniture, and against James W. Low and Francis Dow, owners of said steam propeller Pilot, and against all persons intervening for their interest in said boat, in a cause of wages, civil and maritime, alleges as follows:

First. That some time in the month of November last, the above-named owners did, by themselves or their agents, hire the libellant to serve as pilot on board of such steam propeller as the said owners should designate in the line of propellers running from New York, on the Hudson river, and thence by the way of the canal and Lake Champlain, to St. Johns in Lower Canada, for the season then next ensuing, at the usual and customary wages, and the wages for which the libellant, in previous years, had served as pilot, being twenty-five dollars per month. That in pursuance of such agreement, the libellant first entered on board and into the service of the steam propeller Phoenix, one of said line, as such pilot as aforesaid, on the thirteenth day of April last.

Second. That the libellant continued on board said boat Phoenix, as such pilot, until the tenth day of June following, when by the orders of the said

owners, or their agent, he was transferred on board the steam propeller Pilot, another of said line, and continued to navigate her as pilot, being engaged in carrying cargo, and towing boats, and earning freight, between the places, and the river aforesaid, until the twenty-fifth day of November instant, when the season ended, and the boat was laid up, and the libellant discharged.

Third. That during the whole time the libellant was on board the said steam propeller Pilot, to wit, from the time of his entering on board thereof to the time of his discharge therefrom, he well and faithfully performed his duty as such pilot as aforesaid, and was obedient to all lawful commands of the said master, whereby he became entitled to demand, and have of and from the said boat Pilot and her owners, the sum of one hundred and fourteen dollars and upwards, over and above all just deductions.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said steam propeller Pilot, her tackle, apparel, and furniture, and that the said owners, and all persons intervening for their interest in said boat, may be cited to appear and answer all the matters aforesaid, and that the said vessel may be condemned and sold to pay the wages aforesaid, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

GEORGE MYGATT.

Sworn, &c., before me,

JOHN W. NELSON, U. S. Commissioner.

BURR & BENEDICT, Proctors.

E. C. BENEDICT, Advocate.

No. 99. — LIBEL IN PERSONAM BY A MASTER AGAINST THE OWNER FOR WAGES.

— (*Vide the form ante, page 225.*)

No. 100. — LIBEL AGAINST OWNERS FOR PILOTAGE.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Martin Gray, of said district, pilot, against Russel H. Post, William Layton, Noah Stokeley, and Richard P. Williams, now or late owners of the ship Elizabeth Dennison, in a cause of pilotage, civil and maritime, alleges as follows:

First. That sometime in the month of July, A.D. 1848, the said ship then being in the port of New York, under the command of one Spencer, the said owners by themselves, or their agents, employed the libellant to take the

said vessel to sea, from the port of New York, as pilot. That accordingly the libellant went on board said vessel, and took charge of the same, and did pilot her to sea on or about the twenty-fifth day of July aforesaid.

Second. That the libellant is a regular pilot, and did his duty faithfully and according to the best of his ability, as the pilot of said vessel, and is entitled to the regular and lawful fees for such service, which amount to the sum of thirty dollars and sixty-three cents, which sum the said master has admitted to be due, and promised to pay from time to time, but which is still due and unpaid.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that a warrant of arrest, in due form of law, according to the practice and course of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said Russel H. Post, William Layton, Noah Stokely, and Richard P. Williams, and that they may be cited to appear and answer, upon oath, all and singular the premises aforesaid, and that this Honorable Court will be pleased to decree the payment of the amount due to him aforesaid, with interest and costs, and that he may have such other and further relief as in law and justice he may be entitled to receive.

Sworn to before me, this day
of November, 1849,

CHARLES W. NEWTON, U. S. Commissioner.

C. L. BENEDICT, Proctor.

E. C. BENEDICT, Advocate.

NO. 101. — LIBEL BY THE HOLDER OF A BOTTOMRY BOND AGAINST SHIP,
FREIGHT, AND CARGO.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Charles C. Keyser, of Pensacola, in the Territory of Florida, against the brig Bridgeton (whereof William A. Benedict now is, or lately was master and part owner), her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of bottomry, civil and maritime, alleges as follows:

First. That the said brig Bridgeton, while on a voyage from Laguira to the port of New York, during the month of August last, encountered a severe storm and gale, which injured the said brig, so that they were obliged to bear away for Pensacola, to refit the said brig, and to procure repairs, supplies, and necessaries to enable the said brig to perform her intended voyage to New York. That the said William A. Benedict being a stranger at Pensacola, and being in want of money to pay for the repairs of said brig and fit her for sea, and fur-

nish her with provisions and other supplies necessary for the prosecution of his intended voyage, and having no other means of procuring the same, borrowed from the libellant, with the commission thereon, the sum of two thousand one hundred and seventy-nine dollars and eighteen cents, upon the bottomry and hypothecation of the said brig, cargo, and freight, and that the said sum was advanced and paid accordingly.

Second. That in consideration of the said advance, and, in fulfilment of the agreement of bottomry and hypothecation as aforesaid, he, the said William A. Benedict, the master, did, by a certain bond or instrument of bottomry and hypothecation, a copy of which is hereto annexed, bearing date at Pensacola, the seventeenth day of September, A.D. 1842, by him signed and duly executed, in the presence of two credible witnesses, who have subscribed their names thereto as witnesses of the due execution thereof, bind the said brig, the tackle, apparel, and furniture, of the same, and also the freight now due and which might become due hereafter, to the owners of the said brig, for her then present voyage, and also the cargo then on board, and about to be put on board, said brig, as security for the payment of a certain bill of exchange drawn by the said William A. Benedict, on John R. Tatem, of Philadelphia, payable at sight, for the said sum of twenty-one hundred and seventy-nine dollars and eighteen cents, in favor of the said libellant, for the said advance so made, to repair and refit the said brig as aforesaid; and the said master did further agree in and by the said bond, that the said brig, her tackle, apparel, and furniture, her freight and cargo, should be at all times liable and chargeable for the payment of the bill of exchange until the payment thereof.

Third. That the said bill of exchange having been presented in due time to the said J. R. Tatem, was not accepted nor paid, and was duly protested on the twentieth day of October instant.

Fourth. That the said sum of twenty-one hundred and seventy-nine dollars and eighteen cents was so advanced and paid by the libellants to the said master, for the purpose aforesaid, and was necessary therefor, and that the said brig could not have sailed from Pensacola, if the same had not been advanced and paid as aforesaid; that the said brig, upon being so repaired, proceeded to the port of New York, where she arrived in the present month of October, to wit, on the sixteenth day of the same month.

Fifth. That the libellant has not received the aforesaid sum of twenty-one hundred and seventy-nine dollars and eighteen cents, though the same has been demanded from the said J. R. Tatem, and the payment thereof frequently requested of the said master, and that the said bill of exchange and the said bottomry and hypothecation remain entirely unsatisfied, to the great damage of the libellant.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime juris-

diction, may issue against the said brig Bridgeton, her tackle, apparel, and furniture, and her freight and cargo, and that all persons having, or pretending to have, any right, title, or interest therein, may be cited to appear and answer all and singular matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the amount so due, with interest and costs, and that the said brig, her tackle, apparel, and furniture, and freight and cargo, may be condemned to pay the same; and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

CHARLES C. KEYSER,

By C. R. ROBERT, his Att'y.

BURR & BENEDICT, Proctors for Libellant.

E. BURR, Advocate.

Southern District of New York, ss.

Christopher R. Robert being sworn says.—That he is the attorney in fact, and agent of the libellant, Charles C. Keyser, who resides at Pensacola. That he has read the foregoing libel, and knows the contents thereof, and that the same is true, to the best of his knowledge, information, and belief.

C. R. ROBERT.

Subscribed and sworn to this 28th day

of October, 1842, before me,

GEORGE W. MORTON,

U. S. Commissioner.

COPY BOND.

To all men to whom these presents shall come:—

I, William A. Benedict, mariner, and master of the brig Bridgeton, of New York, of the burthen of 120 51-45ths tons, now at anchor in the Bay of Pensacola, send greeting: Whereas, I, the said William A. Benedict, master of the aforesaid brig, now in prosecution of a voyage from Lagaira to New York, having put into Pensacola Bay for the purpose of making repairs and other expenses, have drawn a bill of exchange of even date with these presents, upon J. R. Tatem, Esquire, of Philadelphia, for the sum of twenty-one hundred and seventy-nine dollars and eighteen cents, in favor of Charles C. Keyser, Esq., of Pensacola, in the Territory of Florida, which amount of said bill of exchange was at my request, and to fit the said brig for going to sea, advanced and expended by the said Charles C. Keyser: Now know ye, that I, the said William A. Benedict, for and in consideration of the premises and of one dollar in hand paid, by these presents, do bind myself, my heirs, executors, and administrators, and also the owners of the said brig, to the just and true payment of the said bill of exchange, as well as the said brig Bridgeton, the tackle and apparel of the same, together with the freight now due, and which may become due hereafter to the owners of the said brig Bridgeton for her present voyage, and also the cargo now being on board of said brig, and about to be

put on board of the same, pledging and hypothecating all and singular the same to the said Charles C. Keyser, his heirs, executors, and administrators, for the payment in full of the said bill of exchange, according to its terms and tenor. And the said William A. Benedict doth covenant with the said Charles C. Keyser, that I am the master of the said brig Bridgeton, and have authority to charge the same, her freight, and cargo, as aforesaid, and that the same shall at all times be liable and chargeable for the payment of the said bill of exchange until the payment thereof, according to the true intent and meaning of these presents.

In witness whereof, I have hereto set my hand and seal to three bonds of this tenor and date, one of which being satisfied, the others are to be null and void, at Pensacola, this seventeenth day of September, A.D. 1842.

WM. AMOS BENEDICT. [L. S.]

Witnesses —

H. F. INGRAHAM.

WILLIAM LIDERS.

No. 102. — LIBEL IN REM AGAINST A SHIP BY A CONSIGNEE OF GOODS, ON A BILL OF LADING, FOR NOT DELIVERING THE GOODS IN GOOD ORDER.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Herman Boker, of the city of New York, merchant, against the Norwegian brig or vessel, called the Aurora, whereof Cord Hjorth was and is master, her tackle, apparel, and furniture, and all persons intervening for their interest therein in a cause of contract, civil and maritime, alleges as follows :

First. That some time in the month of March, one thousand eight hundred and forty-seven, Maurice Harting shipped on board said brig, then lying in the port of Antwerp, in the kingdom of Belgium, and bound to the port of New York, in good order and well conditioned, to be carried and transported in said brig to the port of New York, and delivered to the libellant in like good order, eighty-seven packages of merchandise, for the freight of three and a half dollars per ton of one thousand kilograms, and average accustomed to be paid by the libellant, the said Maurice Harting receiving therefor, from the said master, a bill of lading, a receipt and contract, whereby and wherein the said master charged his body and goods, and also the said vessel, her tackle, apparel, and furniture, for the performance of said contract, a copy of which is hereto annexed.

Second. That said brig sailed from the said port of Antwerp for the port of New York, with the said merchandise on board, where she arrived on or about the twentieth day of May, 1847, and now is ; but notwithstanding the libellant has been at all times ready and willing, and still is ready and willing, to receive the said merchandise in good order, and on so receiving the same to pay the freight thereon, yet the said master has not yet delivered the said merchan-

dise to the libellant in good order and well conditioned; but owing to the careless, negligent, and improper manner in which the said merchandise was stowed, and the want of proper care on the part of the said master, his officers and crew, and persons employed by him or them, and by reason of permitting the passengers and other persons to throw water and filth on and among the cargo, and on a false and open deck, the same ran through upon the said cargo and damaged seventeen packages containing cutlery and other hardware, and iron goods, greatly, whereby the libellant has sustained damage to the amount of twelve hundred dollars.

Third. That said brig is a foreign vessel, and is taking in cargo, and is about to leave this port and the United States, and the said master has refused, and refuses, to pay said damage and to deliver said merchandise in good order, so that the libellant will be without remedy unless by proceedings against said vessel, her tackle, apparel, and furniture.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this court in cases of admiralty and maritime jurisdiction, may issue against the said master and against the said brig, her tackle, apparel, and furniture, and that all persons claiming any interest therein may be cited to appear and answer, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the damages aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

HERMAN BOKER.

Sworn before me, this

10th June, 1847,

J. W. NELSON, U. S. Commissioner.

BURR, BENEDICT & BEEBE, Proctors.

BENEDICT, Advocate.

(Annex a copy of the bill of lading.)

No. 103. — A LIBEL IN PERSONAM AGAINST A CONSIGNEE FOR FREIGHT, ON A BILL OF LADING.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of A. F. Jenness, William Chase, and Edward Leavitt, composing the firm of Jenness, Chase, & Co., owners of the bark Ranger, her tackle, apparel, and furniture, against Christopher R. Robert, and Howell L. Williams, composing the firm of Robert & Williams, of the city of New York, merchants, in a cause of contract, civil and maritime, alleges as follows:

First. That they were, at the times hereinafter mentioned, and still are, the owners of the bark *Ranger*, and that Woodbury Dyer was then the master thereof.

Second. That some time in the month of May last, the said bark, then lying in the port of Cardenas, and destined on a voyage thence to the port of New York, A. B. shipped on board the said vessel twenty hogsheads of sugar, weight and contents unknown, to be therein carried from the said port of Cardenas to the port of New York, and there to be delivered, the dangers of the seas only excepted, in like good order as they were received, to the defendants, Robert & Williams, or to their assigns, he or they paying freight for the same at the rate of four dollars and fifty cents per hogshead, without primage and average accustomed. And, accordingly, the said master, at the port of Cardenas, on the sixteenth day of May, one thousand eight hundred and forty-nine, affirmed to the usual bills of lading, and delivered the same to the shippers of said cargo, a copy of which bills of lading is hereto annexed, marked "Schedule A."

Third. That in the same month said A. B. also shipped on board the said bark for the same voyage, eighty hogsheads of Muscavado sugar and seventy-nine hogsheads of molasses, on deck, weight and contents unknown, to be likewise delivered at the port of New York to the respondents, or to their assigns, he or they paying freight for the same at the rate of four dollars and seventy-five cents for each hogshead of sugar, and two dollars and fifty cents for each one hundred and ten gallons, gross custom house gauge of the casks delivered, of molasses, in New York, without primage and average accustomed. And the said master, on the seventeenth day of May, signed the usual bills of lading, and delivered the same to the shippers, a copy of which is also hereto annexed, marked "Schedule B."

Fourth. That soon after the said bark, with the said cargo on board, set sail from Cardenas for New York, and there in due time safely arrived, and the said sugar and molasses were duly delivered to the said Robert & Williams, and were by them accepted and received.

Fifth. That by reason of the premises, the said Robert & Williams became bound to pay to these libellants the freight for the said merchandise, which amounted in the whole to the sum of seven hundred and eighteen dollars and twenty-seven cents, as is more particularly set forth in the schedule hereto annexed, marked C.

Sixth. That the said Robert & Williams, notwithstanding they have accepted and received the said merchandise, and that in like good order and condition as it was shipped, have refused to pay the freight for the same, although often thereto requested; and there is now due the libellants for the freight on said merchandise, the sum of seven hundred and eighteen dollars and twenty-seven cents, with interest.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays, that a citation in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said Robert & Williams, and that they be cited to appear and answer upon oath, all and singular, the matters aforesaid, and that this Honorable Court would be pleased to decree payment of the freight aforesaid, with interest and costs, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

A. F. JENNESS.

Sworn, July 8, 1849,

before me,

J. W. NELSON, U. S. Commissioner.

C. A. BENEDICT, Proctor.

E. L. BENEDICT, Advocate.

Schedule A.

Shipped in good order and condition, by _____ on board the bark called the Ranger, whereof Dyer is master, now lying at the port of Cardenas and bound for New York, twenty hhds. sugar, with thirty-three thousand two hundred and nineteen pounds nett, being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of New York, the dangers of the sea only excepted, unto Messrs. Robert & Williams, or to their assigns, he or they paying freight for the same, four dollars and fifty cents per each hhd., without primage and average accustomed. In witness whereof, the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Union
No. 1—20.

Dated in Cardenas, the 10th day of May, 1849.

WOODBURY DYER.

Schedule B.

Shipped, in good order and well conditioned, by _____ in and upon the good bark called the Ranger, whereof Woodbury Dyer is master, for this present voyage, and now lying in the port of Cardenas, and bound for New York, eighty hhds. of Muscovado sugars, containing one hundred and eighteen thousand six hundred and twenty-six pounds, nett.

R. W.
80 hhds. of
Muscov. Sugar
79 hhds. Mo-
lasses on
deck.

Seventy-nine hhds. of molasses, containing eleven thousand three hundred and seventy-four gallons, of which seventy-nine hhds. are on deck, being marked and numbered as in the margin, and to be delivered in the like good order and condition at the aforesaid port of New York, all and every the dangers and accidents of seas and navigation of whatever nature or kind excepted, unto Messrs. Robert & Williams, or to their assigns, he or they paying freight for the said goods, four dollars and seventy-five cents per each hhd. of

sugar, and two dollars and fifty cents per each one hundred and ten gallons, gross custom house guage, of the casks delivered of molasses in New York, without primage and average accustomed. In witness whereof, the master or purser of the said bark has affirmed to three bills of lading, all of this tenor and date, one of which being accomplished the other to stand void.

Dated in Cardenas, the 17th May, 1849.

Weight and contents unknown.

WOODBURY DYER.

Schedule C.

Messrs. ROBERT & WILLIAMS,

		To Bark RANGER,	Dr.
To Freight from Cardenas,			
	20 hhds. Sugar	at \$4 50	\$90 00
Union	80 " "	4 75	380 00
R. W.	79 " Molasses, 10,924 galls. gross		
	guage casks, at \$2.50 pr. 110 galls.		248 27
			\$718 27

New York, June 19, 1849.

No. 104. — LIBEL IN PERSONAM ON A CHARTER PARTY, AGAINST THE CHARTERER FOR CHARTER MONEY.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York:

The libel of Henry M. Allen, master, part owner, and agent of the brig Josephus, of Mattapoisetta, against George Whitaker, of the city of New York, merchant, in a cause of contract, civil and maritime, alleges as follows:

First. That some time in the month of March, one thousand eight hundred and forty-five, the said brig being then in the port of New York, the said libellant made and concluded with the respondent, a charter party (a copy of which is hereto annexed, and to which the libellant craves leave to refer), bearing date the tenth day of March, in the year aforesaid, by which the libellant, for and in consideration of the covenants and agreements, thereafter mentioned, to be kept and performed by the said respondent, did covenant and agree on the freighting and chartering of the said brig unto the said respondent for a voyage from the port of New York, to Antigua, La Guayra, and Puerto Cabello, and back to New York, on the terms in the said charter party mentioned, that is to say, —

1st. The said libellant engaged that the said brig, in and during the said voyage, should be kept tight, staunch, well fitted, tackled, and provided with every requisite, and with men and provisions for such a voyage.

2d. The said libellant engaged that the whole of the said brig (with the

exception of the cabin, and the necessary room for the accommodation of the crew and the stowage of the sails, cables, and provisions), should be at the sole use and disposal of the said respondent during the voyage aforesaid. And that no goods or merchandise whatever should be laden on board otherwise than for the respondent, or his agent, without his consent, on pain of forfeiture of the amount of freight agreed upon for the same.

3d. The libellant further engaged to take and receive on board the said brig, during the aforesaid voyage, all such lawful goods and merchandise as the said respondent or his agent might think proper to ship.

Second. That, among other things, it was by the said charter party covenanted and agreed that the said respondent, for and in consideration of the covenants and agreements to be kept and performed by the said libellant, chartered and hired the said brig on the terms following, therein mentioned, that is to say, —

1st. The said respondent engaged to provide and furnish to the said brig the necessary cargoes or ballast for her lading at the several ports aforesaid.

2d. The said respondent further engaged to pay to the said libellant, or his agent, for the charter or freight of the said brig during the voyage aforesaid, in the manner therein following, that is to say, —

Five hundred and ten (510) dollars per calendar month for each and every month, and *pro rata* for any unexpired month that said vessel might be employed, payable in current money of the United States, also to pay all the brig's foreign port charges, lighterage, and pilotage.

The master to have what money he might require in foreign ports for disbursements, and the balance payable on discharge of the cargo in New York.

Third. And the libellant further alleges and propounds, that afterwards, to wit, on the twentieth day of March, in the year aforesaid, at the said port of New York, the said brig being then and there tight, staunch, well fitted, tackled, and provided with every requisite, and with men and provisions necessary for such a voyage as in said charter party mentioned, the said libellant and R. Gray, master of the brig aforesaid, loaded and received on board of the said brig, a full cargo of lawful goods, with which the said master immediately set sail and proceeded to the port of Antigua, aforesaid, where being afterwards, to wit, on the third day of April, in the year aforesaid, arrived, the said master then and there made a delivery of such part of said cargo as was destined for Antigua aforesaid, to the agents or consignees of the said respondent.

Fourth. That the said master afterwards, to wit, on the twelfth day of April, in the year aforesaid, set sail and proceeded from the said port of Antigua to the port of La Guayra aforesaid, where being afterwards arrived, to wit, on the sixteenth day of April, in the year aforesaid, the said master then and there made a delivery of such part of said cargo as was destined to La

Guayra aforesaid, and also took, loaded, and received on board of said brig five hundred bags of coffee, to be conveyed to New York.

Fifth. That the said master, afterwards, to wit, on the twenty-fifth day of April, in the year aforesaid, set sail and proceeded from the port of La Guayra, aforesaid, to the port of Puerto Cabello aforesaid, where being afterwards, to wit, on the twenty-sixth day of April, in the year aforesaid, arrived, the said master then and there made a delivery of the articles and residue of the said outward cargo, and afterwards, to wit, on the sixth day of May, in the year aforesaid, at Puerto Cabello aforesaid, took on board the said brig a further cargo of lawful goods, with which the said master set sail and proceeded to the port of New York aforesaid, where he afterwards, to wit, on the twenty-second day of May, one thousand eight hundred and forty-five, arrived, and delivered said homeward cargo to the said respondent or his agents at said port.

Sixth. That the libellant has always since the making of the said charter party, well and truly performed and kept all and singular the covenants and undertakings on his part, according to the said charter party to be performed and kept, but the said respondent has not well and truly performed, and kept, all and singular the covenants and undertakings on his part, according to the said charter party, to be performed and kept as is hereinafter more particularly propounded.

Seventh. That on the discharge of the said homeward cargo at the port of New York aforesaid, the sum of one thousand two hundred and forty-one dollars and upwards, for freight, foreign port charges, lighterage, and pilotage (after deducting dollars received by said master in foreign ports for disbursements), became and was due and payable from the said respondent to the libellant, according to the said charter party and the agreement of the said respondent, as is alleged in the second article of this libel.

Eighth. That the said respondent has paid to the libellant the sum of six hundred and forty-one dollars on account of the said charter, and no more, and has not paid a balance of six hundred dollars due thereon, from the respondent to the libellant, on the discharge of the said cargo at the said port of New York, although often requested thereto, and now utterly neglects and refuses so to do, to the damage of the said libellant, the full sum of seven hundred and twenty-five dollars and upwards.

Ninth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellants pray, that a warrant of arrest, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said respondent, and he be cited to appear and answer upon oath all and singular the matters so articulately propounded, and that this Honorable Court would be pleased to decree the payment of the

damages aforesaid, with costs, and that the libellants may have such other and further relief as in law and justice they are entitled to receive.

HENRY M. ALLEN.

Sworn this day of July, 1849,
before me,

GEORGE W. MORTON, U. S. Commissioner.

CHARLES L. BENEDICT, Proctor.

E. C. BENEDICT, Advocate.

No. 105. — LIBEL IN REM AND IN PERSONAM AGAINST A VESSEL AND OWNER,
ON A CHARTER PARTY, FOR THE VIOLATION OF THE CHARTER.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States within and for the Southern District of New York.

The libel of William Doughty, of the city of Washington, in the district of Columbia, against the schooner William Seymour, of New York, her tackle, apparel, and furniture, and against Walter Carpenter, and all persons lawfully intervening for their interest in the said schooner, in a cause of contract, civil and maritime, alleges as follows:

First. That the said Walter Carpenter having, on the sixth day of January, one thousand eight hundred and forty-one, as master and owner of the schooner William Seymour, of New York, of the burthen of one hundred and twenty-seven tons, or thereabouts, then lying in the harbor of New York, chartered the said vessel unto the libellant, for a voyage from the port of New York, to such landing or landings in Atachapala Bay, or waters emptying into the same, as the libellant might designate — there to take on board a full cargo of live oak timber, and return to the Navy-Yard, at Brooklyn, New York, in the port and harbor of New York, on the following terms, that is to say: First — The said Walter Carpenter engaged that the said vessel, during said voyage, should be kept tight, staunch, well fitted, tackled and provided with every requisite, and with men and provisions necessary for such a voyage. Second — That the whole of said vessel, with the exception of the cabin and the necessary room for the accommodation of the crew, and of the sails, cables, and provisions, should be at the sole use and disposal of the libellant during the voyage aforesaid. Third — That he would take and receive on board the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the libellant or his agent might think proper to ship (excepting lime, and all other extra hazardous articles), and a gang of men not exceeding twelve in number, and to find them in good, wholesome provision, one of whom was to have cabin accommodations, and the others to have steerage fare only. And the libellant agreed with the said Walter Carpenter to charter and hire the said vessel as aforesaid on the following terms, that is to say: First — The libellant engaged to provide and furnish to the said vessel outward, one hundred bar-

rels more or less of heavy freight, and from eight to twelve passengers, who were to be accommodated in the manner aforesaid; also, to furnish a full return cargo of live oak timber. Second — To pay to the said Walter Carpenter, or his agent, for the charter or freight of said vessel, during the voyage aforesaid, for each passenger, the sum of ten dollars; for the outward freight, nothing; and for the return cargo, the sums particularly mentioned in the said charter party; and it was further understood and expressly agreed in and by the said charter party, that said vessel should be ready to receive said outward freight, the fourth day of January, 1841, and should sail on such voyage the seventh day of January, 1841, and that the said charter should commence the fourth day of January, 1841; and that said Walter Carpenter should have the privilege of filling with freight, for his own special benefit, such part of said vessel as might not be required by the libellant, on her outward voyage, provided there should be no detention on that account; and that on the signing of the said charter party, the libellant should pay the passage money aforesaid, and should advance a further sum, in all amounting to three hundred and fifty dollars; and to the true and faithful performance of the said charter party, the said Walter Carpenter and the libellant, each to the other, bound themselves and their heirs, executors, administrators, and assigns, and also the said vessel, her freight, tackle, and appurtenances, and the merchandise to be laden on board, in the penal sum of one thousand dollars.

Second. That at and immediately after the making of the said charter party, the libellant provided and furnished to the said vessel, for her said outward voyage, one hundred barrels more or less of heavy freight, the same not consisting of lime nor of other extra hazardous articles, and also ten passengers, to be accommodated in the manner provided by said charter party, and paid to the said Walter Carpenter for each of the said passengers, the sum of ten dollars, the same being in advance for their passage money; and did also advance to the said Walter Carpenter the further sum of two hundred and fifty dollars on account of the said charter party, and to be deducted from the amount of freight money, on the return of the said Walter Carpenter to New York, making in all the sum of three hundred and fifty dollars, as required by the said charter party.

Third. That the libellant has well and truly performed and kept all the covenants and undertakings on his part, in the said charter party to be performed and kept; but neither the said Walter Carpenter, nor the said vessel, has well and truly performed and kept the covenants and undertakings on the part of the said Walter Carpenter and of the said vessel, according to the said charter party to be performed and kept.

Fourth. That after the libellant had provided and furnished the said freight and passengers for the outward voyage aforesaid, and had paid and advanced the said sums of money, as hereinbefore mentioned, the said Walter Carpenter did not, nor did the said vessel sail on the said voyage, on the seventh day of January, 1841, nor with reasonable dispatch, but, without any just or reason-

able cause, delayed and remained in the port of New York, until the nineteenth day of January, 1841, to the great injury and risk of loss of the libellant.

Fifth. That the said Walter Carpenter, under pretence that a part of said vessel was not required by the libellant on her outward voyage, took on board, for his own special benefit, a large quantity of goods and merchandise other than those provided and furnished by the libellant; and the whole of the said vessel, with the exception of the cabin and the necessary room for the accommodation of the crew, and of the sails, cables, and provisions, was not at the sole use and disposal of the libellant during the voyage aforesaid.

Sixth. That the said Walter Carpenter detained the said vessel for the purpose of taking on board of the said vessel, for his own special benefit on her outward passage, goods and merchandise other than those provided and furnished by the libellant; and by so taking on board of the said vessel for his own special benefit, goods and merchandise other than those provided and furnished by the libellant, impeded her voyage and subjected the vessel to the difficulties which afterwards occurred.

Seventh. And the libellant further alleges and propounds, that Atchapala Bay, in the said charter party mentioned, otherwise called Atchafalaya Bay, is situate on the coast of the State of Louisiana, and the said vessel ought to have performed her voyage thither from the port of New York in a period of time not exceeding thirty days from her departure; but that the said Walter Carpenter and the said vessel left the port of New York on the nineteenth day of January, 1841; and on the fifth day of March, 1841, the said vessel put into the port of Savannah, not having performed one-half of her said outward voyage.

Eighth. That the course and conduct of the said Walter Carpenter, and the management of the said vessel was such, that all the said passengers, furnished by the libellant as aforesaid, either left the said vessel at Savannah for good cause, or were discharged by the said Walter Carpenter, who made no offer of carrying them forward on the said voyage, whereby the libellant was deprived of all the gains and advantages which he should, and ought, and would have obtained from the carriage of the said passengers.

Ninth. That on the arrival of the said vessel at Savannah, and between the fifth and eleventh of March, 1841, the said Walter Carpenter caused a large part of the goods and merchandise so supplied and put on board of said vessel by the libellant, to be sold, and received the proceeds thereof, but has not rendered any account thereof to the libellant, nor paid for the same; which goods and merchandise so sold were of the value to the libellant of at least four hundred dollars.

Tenth. That the said Walter Carpenter, on or about the fifth day of April, 1841, caused other parts of the goods and merchandise so supplied and put on board of said vessel by the libellant, to be shipped from Savannah to Samuel W. Dewey, of New York, the agent of said Walter Carpenter, but directed said agent not to deliver the same to the libellant, except upon the payment

of freight, whereby the libellant is required to pay a large sum as freight, in order to obtain possession of said goods.

Eleventh. That on the arrival of said vessel at Savannah as aforesaid, the said Walter Carpenter refused to proceed on the said voyage, before January, 1842, and wholly broke up the said voyage; nor did he offer to proceed before that time, nor to carry said passengers or freight; nor did the libellant accept said goods at that port; nor did the said Walter Carpenter earn any part of the freight, either for the said passengers or the said goods supplied by the libellant, nor become entitled to the same; but became and is liable to refund the sum so paid by the libellant as aforesaid, and also became liable to pay for the said goods so shipped by the libellant, and also the said sum of one thousand dollars mentioned and stipulated in the said charter party.

Twelfth. That the said vessel having brought on a cargo from Savannah to Baltimore, and taken in a cargo at Baltimore, for New York, arrived in the port of New York, on the nineteenth day of May instant, and neither the said Walter Carpenter, nor any one on his behalf, nor in behalf of the said vessel, has paid to the libellant any part of the said sum of three hundred and fifty dollars, nor the said sum of one thousand dollars, or any part thereof, nor any sum whatever on account of the said charter party, or the damages for the violation thereof, nor on account of the sale and conversion of the articles belonging to the libellant, nor returned said articles to the libellant, nor in any way afforded him any satisfaction in the premises.

Thirteenth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction may issue against the said schooner, William Seymour, her tackle, apparel, and furniture, and that the said Walter Carpenter, and all other persons having or pretending to have any interest in the said vessel, may be cited to appear and answer the matters aforesaid, and that this Honorable Court will be pleased to decree to the libellant such sum for damages for the violation of said charter party as may be just against the said Walter Carpenter and the said vessel, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

CHARLES B. MOORE, Proctor for Libellant.

D. E. WHEELER, Advocate.

No. 106. — JURAT BY LIBELLANT'S PROCTOR.

Southern District of New York, ss.

Charles B. Moore, of the city of New York, proctor for the libellant in the foregoing libel, being duly sworn, says — That the said libellant, as deponent is informed and believes, resides in the District of Columbia, and is now absent

from the State of New York, having been in the State of Louisiana when last heard from. That the matters set forth in the foregoing libel are derived principally from original documents; that deponent has read the said libel, and knows the contents thereof, and that the matters therein stated are true to the best of the knowledge, information, and belief of this deponent.

CHAS. B. MOORE.

Sworn to this 20th day of May, 1841,
before me,

GEORGE W. MORTON, U. S. Commissioner.

NO. 107. — A LIBEL IN REM BY A SEAMAN, ON A WHALING CONTRACT, FOR HIS SHARE OF THE VOYAGE, AND THE EXPENSES OF HIS CURE, BEING INJURED IN THE SERVICE OF THE SHIP.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of George W. Stotesbury, late a seaman on board the ship *Atlantic*, whereof Thomas Wilcox now is, or late was, master, against the said ship, her tackle, apparel, and furniture, in a cause of wages, civil and maritime. And thereupon the said libellant alleges as follows:

First. That some time in the month of July, one thousand eight hundred and forty-five, the said ship *Atlantic*, then lying in the port of New London, and destined on a three-years whaling voyage to the North-West Coast, the then master, William Beck, by himself or his agent, hired this libellant as a green hand on board the said ship for the voyage aforesaid, on the two hundred and twenty fifth lay or share of what should be taken, as wages, and this libellant signed the shipping articles, wherein the contract is fully set forth, and which he prays may be produced by the said master, as this Honorable Court shall direct.

Second. That on or about the fourth day of August, one thousand eight hundred and forty-five, this libellant went on board and into the service of the said vessel as a green hand, and the said ship, with the libellant on board, proceeded on her intended voyage, and cruised about the Western Islands and other places for the period of about seven months, when the said ship had arrived at Maui, in the Sandwich Islands.

Third. That as the said ship was going out of the harbor at Maui, on or about the sixteenth day of March, one thousand eight hundred and forty-eight, the libellant engaged in the service of said vessel, while doing his duty and obeying the commands of the master, fell from the main top sail yard, and was so severely injured that he was taken ashore to the hospital, where he remained confined to his bed for the space of twenty-one months, or thereabouts.

Fourth. That while this libellant was so confined in the hospital the said ship went to the North-West, and cruised thereabouts until the month of November, one thousand eight hundred and forty-seven, when she started for home, and on her way touched at Maui on or about the twentieth day of the

said month, and took this libellant on board, and then proceeded directly to the port of New London, where she arrived on or about the twentieth day of April last, and has since come to this port, where she now is.

Fifth. That during the said voyage the said ship took a cargo of oil and bone of great value, being, as the libellant is informed and believes, four thousand seven hundred barrels of right whale, between forty and fifty barrels of sperm, and forty-seven thousand pounds of bone; and the libellant claims to be entitled to demand and have of and from the said ship, her master and owners, his share or lay of the said cargo, being the two hundred and twenty-fifth part thereof, worth, as this libellant verily believes, the sum of three hundred dollars and upwards, which the master and owners of the said ship have hitherto refused and still refuse to pay, to the great damage of the libellant.

Sixth. That by reason of the injuries so received in the service of the said vessel, as above stated, the libellant has lost the use of one of his legs, and one of his arms is rendered almost useless, and by reason thereof he has been put to great expense already for medical advice, and before he can be restored must undergo an operation involving further expense to a large amount, and he claims to be entitled to demand and have of the said ship his reasonable expenses already incurred, and hereafter to be incurred, in and about his cure, and his reasonable support since his said injury, and till he shall be cured.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this Honorable Court, in verification whereof, if denied, the libellant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture, and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and to answer all and singular the matters hereinbefore set forth, and that this Honorable Court would be pleased to decree the payment of the wages aforesaid, with costs, and that the libellant may have such other relief in the premises as in law and justice he may be entitled to receive.

ERAS. C. BENEDICT,

One of the Proctors for the Libellant,

Libellant being absent and sick.

Sworn to, before me this day
of July, 1848, as to best of depo-
nent's knowledge and belief.

GEO. W. MORTON, U. S. Commissioner.

BURR & BENEDICT, Proctors for Libellant.

BEEBE, Advocate.

No. 108. — JURAT BY THE LIBELLANT'S PROCTOR.

Southern District of New York ss.

Erastus C. Benedict, one of the proctors for the libellant, being sworn says — That the libellant in this cause is absent from this district, and sick, and deponent is authorized to act for him herein, and that the foregoing libel is true, according to his information and belief.

E. C. BENEDICT.

Sworn July, 5th, 1848,
before me,

GEORGE W. MORTON, U. S. Commissioner.

No. 109. — A LIBEL BY SHIP'S HUSBAND AGAINST THE CHARTERERS, FOR DEMURRAGE.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Sylvester Baxter, part owner and agent, and ship's husband, of the bark *Arethusa*, of Barnstable, against David S. Draper and John B. Develin, merchants composing the firm of Draper & Develin, of the city of New York, in a cause of contract civil and maritime, alleges as follows:

First. That some time in the month of August, in the year one thousand eight hundred and forty-seven, the said bark then being in the port of New York, the said libellant made and concluded with the respondents a charter party, a copy of which is hereto annexed, bearing date the twentieth day of August aforesaid, by which the libellants, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said respondents, did covenant and agree on the freighting and chartering of the said bark unto the said respondents, for a voyage from New York to Lisbon, Cadiz, Marseilles, or Trieste — one only — and from the port of discharge to proceed to Palmero and load back for New York, for the charter money and on the terms and conditions mentioned in the said charter party.

Second. That, among other things, it was therein and thereby agreed between the libellant and the respondents, that the respondents should have fifteen lay days in New York within which to load and dispatch the said bark from the port of New York. And in case the vessel should be longer detained, the said respondents agreed to pay the said libellant demurrage at the rate of thirty-five Spanish milled dollars per day, for each and every day so detained, provided such detention should happen by default of the said respondents or their agent. And it was further understood and agreed that the cargo should be received and delivered alongside, within reach of the vessel's tackles. And it was therein and thereby further understood and agreed that the said charter, and the said fifteen days, should commence when the said vessel was ready to receive cargo at New York, her place of loading, and notice thereof given to the said respondent or to their agent.

Third. That the said bark having been put in readiness to perform the aforesaid voyage, and ready to receive cargo at New York, the said libellant, on the twenty-third day of August, one thousand eight hundred and forty-seven, caused notice thereof to be given to the respondents, pursuant to the terms of the said charter party. And the said respondents commenced to furnish the cargo. But notwithstanding such notice was duly given to the respondents, and notwithstanding the said bark was, from that time, at the direction and disposal of the said respondents, and notwithstanding there was no fault or remissness on the part of the libellant, the said respondents, by their own default, did not load the said bark and give her dispatch from the port of New York within fifteen days, but delayed her, contrary to the terms of the said charter party, until the eleventh day of September thereafter, when she sailed, and the libellant became thereby entitled to demand from the respondents demurrage for five days, at the rate of thirty-five Spanish milled dollars per day, amounting to the sum of one hundred and seventy-five dollars over and above all just deductions.

Fourth. That said vessel well and faithfully performed said voyage, and the respondents paid the charter money therein stipulated except said demurrage. But notwithstanding the said respondents have been frequently requested to pay the said sum of one hundred and seventy-five dollars, the demurrage aforesaid, they have refused, and still refuse, so to do.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that a monition or citation, according to the course and practice of this Honorable Court in admiralty and maritime cases, may issue against the said respondents, and that they be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the demurrage aforesaid with costs, and that the libellant may have such other and further relief as in law and justice he is entitled to receive.

S. BAXTER,

By JOHN A. BAXTER.

BURR & BENEDICT, Proctors.

BEEBE, Advocate.

No. 110. — JURAT BY AN ATTORNEY IN FACT.

Southern District of New York, ss.

John A. Baxter being sworn, says that he is agent or attorney in fact of Sylvester Baxter, the libellant above named. That said libellant is absent from the district, being as deponent believes, in the State of Massachusetts.

That the above libel is true according to the best of his knowledge and belief.

JOHN A. BAXTER.

Sworn May 10th, 1848,
before me,

JOHN W. NELSON, U. S. Commissioner.

BURR & BENEDICT, Proctors.

E. C. BENEDICT, Advocate.

No. 111. — A LIBEL BY THE OWNERS OF A VESSEL, IN PERSONAM AGAINST THE CONSIGNEE OF THE CARGO, FOR UNREASONABLY DETAINING THE VESSEL.

To the Honorable Samuel R. Betts, District Judge of the United States for the Southern District of New York.

The libel of James Sprague, Charles Keen, David Crowell, and Daniel Butler, owners of the schooner John R. Watson, against J. Selby West, of said district, coal dealer, in a cause of contract, civil and maritime, alleges as follows:

First. That in the month of December last, the said schooner lying at Philadelphia, and destined on a voyage to New York, Richard Jones & Co., shipped on board the said schooner one hundred and ninety-four tons of coal, or thereabouts, to be therein carried from Philadelphia to New York, and there delivered in like good order and condition (the dangers of the sea only excepted), to J. Selby West, or his assigns, to whom the same belonged, he or they paying freight for the same, at the rate of ninety cents per ton; and accordingly the master of said schooner, at Philadelphia, on the fifteenth day of December last, signed the usual bill of lading, a copy of which is hereto annexed.

Second. That shortly after, the said schooner set sail from Philadelphia, to New York, with the said coal on board, and there safely arrived on or about the nineteenth day of December; and on the next day, James Sprague, the master of said vessel, caused a written notice to be served upon J. Selby West, the consignee and owner of the coal, as follows:

NEW YORK, Dec. 20th, 1848.

SIR, — You will please to take notice, that the schooner John R. Watson, under my command, and loaded with coal consigned to you, was ready to discharge cargo this morning, of which fact you have been duly notified. And you will further take notice, that demurrage, will be demanded for every day she is detained.

Yours, &c.,

JAMES SPRAGUE.

To J. SELBY WEST, Esq.

Third. That the said West accepted the said cargo, and commenced to receive the said coal, but refused to take it save in very small quantities, and

at irregular times, capriciously and vexatiously, and when urged and requested to take the same more expeditiously, replied, that he would take it when it suited him, and no faster, and would keep the schooner as long as he wanted to, for the captain could not help himself, and in accordance with such threat, he detained the said schooner until the fourth day of January, instant, on which day fifty tons of coal were still on board, and were taken out by him and his agents, and the schooner completely discharged.

Fourth. That during the whole time the said schooner was so detained, she was obliged to lie at the foot of Forty-second street, in the North River, that being the place designated by the bill of lading, in danger of being frozen up and compelled to winter here, and her whole crew were detained, at the expense of the vessel, and two extra men and a horse were kept constantly waiting on the dock during very severe and cold weather, ready to deliver the coal whenever the said West should take it away. And the said West was often notified by the master of the said schooner, that said master was constantly ready to deliver said coal, and that the expense and damage of such detention would be demanded of him.

Fifth. That the usual and sufficient time to discharge such a cargo of coal is four days, and these libellants claim to be entitled to have of the said West, the damages sustained by them by reason of the unjust detention of said vessel beyond that time, which they allege amounts to the sum of two hundred and thirty-one dollars and upwards.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Wherefore these libellants pray that a warrant of arrest, in due form of law, according to the course of this Honorable Court, in admiralty and maritime cases, may issue against the said J. Selby West, and that he may be compelled to answer upon oath, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the damages aforesaid, with costs, and that he may have such other relief as in law and justice he may be entitled to receive.

JAMES SPRAGUE.

Sworn to, before me, this 9th day
of January, 1848,

GEO. W. MORTON, U. S. Commissioner.

BURR & BENEDICT, Proctors.

E. BURR, Advocate.

NO. 112. — A LIBEL IN REM BY A MASTER AGAINST HIS VESSEL, FOR ADVANCES
TO PAY CHARGES AND LIENS UPON HER.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Herman Schultze, master of the schooner Oscar Jones, against

the said schooner, her tackle, apparel, and furniture, and against all persons intervening for their interest, in a cause of contract, civil and maritime, alleges as follows:

First. That in the month of July, 1848, Mr. F. C. Costanze, of New Orleans, the then owner of said schooner, employed the libellant to take charge of the said vessel, as master, on a voyage she was then about to make, and other voyages in search of freight.

Second. That accordingly on or about the first day of July aforesaid, the libellant went on board said vessel as master, and on the sixteenth of July aforesaid, sailed from New Orleans to Terragona, thence to London, thence to Newcastle-upon-Tyne, thence to Gibraltar, then to Malaga, thence back to Gibraltar again, and thence to the port of New York, where he safely arrived on or about the twenty-eighth day of April last.

Third. That during the voyages aforesaid, he was obliged, at various times, to make large advances to and for the said vessel, to enable her to proceed on her voyage and earn freight, and paid various carpenter's bills for repairs, and bought provisions, tackle, apparel, and furniture, for the said vessel, and paid large sums to the seamen employed on board thereof for their wages, and made other advances more particularly set forth in the schedule hereto annexed, amounting, in the whole, to the sum of one thousand nine hundred and nineteen dollars and fifty-two cents.

Fourth. That the said advances were necessary to enable the said schooner to prosecute her intended voyage, and earn freight, and were made in ports and places where the vessel did not belong, and where the owner did not reside, and were made on the credit of the said vessel, as well as of the owner thereof, and were to pay charges and demands which were at the time a lien on said vessel, and by the payment thereof, he became in law subrogated in place of the parties to whom he made such payments, and became entitled to hold, and prosecute, and enforce the lien of said demands for his own reimbursement.

Fifth. That there is now due the libellant, from the said vessel, the sum of four hundred and seventeen dollars and eighty-five cents, for his said advances over and above all just deductions, and the said schooner is now in the port of New York.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course and practice of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said schooner, her tackle, apparel, and furniture, and that all persons having any interest therein, may be cited to appear and answer upon oath, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the amount due to the libellant in the premises, with costs, and that the said ves-

sel may be condemned and sold to pay the same, and that the libellant may have such other relief as in law and justice he may be entitled to receive.

H. SCHULTZE.

Sworn this day of May, 1849,
before me,

G. W. MORTON, U. S. Commissioner.

C. L. BENEDICT, Proctor.

E. C. BENEDICT, Advocate.

SCHEDULE.

*Payments and advances by Herman Schultze, master of the schooner Oscar Jones,
for and on account of said vessel and owners.*

3 bbls. potatoes in Mississippi, ...	\$7 50
Discharging cargo in Terragona, ...	30 50
Paid charges and consular dues, ...	112 54
Carpenter's bills, ...	186 66
Block and hulk for heaving down, ...	12 80
Galley and forecastle scuttle, ...	26 80
Blacksmith's bill, ...	7 00
Tinsmith's bill, ...	9 40
Labor for heaving down, ...	16 00
Warps and running ropes, ...	12 00
Paid ship-chandler, ...	172 00
Do. do.	14 10
Paints, oil, varnish, rosin, and sulphur, ...	42 00
300 lbs. salt meat, ...	30 00
Stevedore's bill, ...	29 20
1 basket raisins, ...	1 00

	£	s.	d.
Pilotage, ...	9	4	7
Tonnage, ...	5	0	0
Provisions, ...	8	16	6
Rope, paint, and oil, ...	6	10	10
Wharfage and mooring, ...	12	6	
Towage and pilotage to carpenter's yard, ...	1	2	0
Carpenter's bill, ...	16	0	
Labor in discharging, ...	1	10	0
Sugar and coffee, ...	2	2	0
Butcher's bills, ...	3	5	0
Vegetables, &c., bills, ...	1	14	0
Towage down the river, ...	1	10	0
Landing the pilot, ...	18	0	

	£	s.	d.
Steward's wages, ...	8	8	8
The crew received	13	6	0
Wages of the mate, ...	29	16	0
	£	s.	d.
Mr. Anderson's bill, ...	13	17	10
Taking out ballast, ...	6	0	
5 galls. rum, ...	17	6	
40 lbs. molasses, ...	11	8	
Market and baker's bill, ...	1	16	0
Towage and pilotage, ...	2	11	0
Paid wages of crew, ...	\$201	00	
Ballast and coals, ...	20	50	
Barrel of flour, ...	6	36	
Cartage on the above, ...	25		
Joseph Battiner, for port charges at Gibraltar, the 2d time, ...	37	45	
Mate's wages for 23 days, ...	23	00	
Ship chandler's bills, ...	46	85	
Do. do.	1	50	
Port charges and bill of health, ...	12	00	
Medicine, ...	3	00	
Two barrels of pork and two of beef, ...	50	92	
Pilotage, ...	\$5	12	
Consular fees and port charges, ...	48	12	
Stevedore's bill, ...	15	60	
Discharging ballast, ...	7	00	
Consul's certificate, ...	2	00	
Ship chandler's bill, ...	44	40	
Crew received	13	10	
Butter, and liquor, and tonnage from Captain Laughlin, ...	13	00	
Market money, ...	1	35	
Cash paid at Custom House for entrance fees, ...	\$27	80	
Pilotage from sea, ...	20	00	
Towage, ...	10	00	
State hospital money, ...	5	00	
8 boxes raisins, short, ...	6	00	
The crew, on acct. of wages, ...	5	99	
Telegraph and postage, ...	2	75	

NO. 113. — LIBEL IN REM BY THE OWNER OF A STEAMER, AGAINST A CANAL-BOAT, FOR TOWING HER.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States, for the Southern District of New York.

The libel and complaint of Reuben Smith, Jr., and Philemon H. Smith, owners of the American vessel known as the steamboat *Metamora*, whereof said P. H. Smith is master, against the canal boat *W. Arnott*, her tackle, apparel, and furniture, now in this district, and against all persons lawfully intervening for their interest, in a cause of contract, civil and maritime.

First. That the said libellants were, and now are, the owners of the American steamer *Metamora*, and that, at the instance and request of one Captain Best, master and owner of said canal boat, by said steamer, towed the said canal boat from the port of Albany to the port of New York, between the ninth and eleventh days of November, 1846; and by agreement with the said Captain Best, were to receive for the towing the said canal boat the sum of twenty dollars; and the said canal boat is now in the Southern District of New York; and the said libellants have demanded the said twenty dollars, and the said captain has refused to pay the same.

Second. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays, that process in due form of law, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against said vessel, her tackle, apparel, and furniture, and that all persons having any interest therein, may be cited to appear and to answer all and singular the matters hereinbefore set forth, and that this Honorable Court would be pleased to decree the payment of said sum, with costs, and that said canal boat may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

P. H. SMITH,

R. SMITH, Jr.

Sworn, November, 11, 1846,

before me,

GEO. W. MORTON, U. S. Commissioner.

WM. JAY HASKETT, Proctor for Libellants.

R. SCOTT, Advocate.

NO. 114. — A LIBEL IN PERSONAM BY THE OWNER OF A WHARF AND A STORE, AGAINST A MASTER FOR WHARFAGE AND STORAGE.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Daniel Jones, of the city of New York, merchant, against Asa White, master of the ship Ajax, of Bristol, England, in a cause of contract, civil and maritime, alleges as follows:

First. That the libellant is the owner of a wharf in the city of New York, and is entitled to recover wharfage from all vessels lying at said wharf. That on the tenth day of November last, the said Asa White placed the said ship Ajax at the wharf of the libellant, where she remained for the period of ninety-one days, for which the libellant is entitled to receive the sum of one hundred and eighty-two dollars, which the said master has refused to pay.

Second. That the libellant is also the owner of a store-house in the city of New York, and that said master stored in said store-house at the usual rates of storage, the sails and rigging of the said ship while the said ship was undergoing repairs, and the libellant is entitled to receive for such storage, the sum of twenty-one dollars, which the said master has refused to pay.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that a warrant of arrest in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said Asa White, master, as aforesaid, and that he may be required to answer on oath, this libel and the matters herein contained, and that this Honorable Court will be pleased to decree to the libellant the payment of said wharfage and said storage, amounting to two hundred and three dollars, with interest and costs, and that he may have such other and further relief as in law and justice he may be entitled to receive.

DANIEL JONES.

Sworn March 1, 1840,

before me,

GEO. W. MORTON, U. S. Commissioner.

A. B., Proctor.

C. D., Advocate.

NO. 115. — LIBEL AGAINST SHIP AND OWNERS, BY A PASSENGER, FOR A VIOLATION OF CONTRACT.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Elon C. Galusha, against the ship Pacific, her tackle, apparel, and furniture, and against H. J. Tibbetts, master and part owner, and Frederick

Griffing, the other part owner of the said ship, and all persons lawfully intervening for their interest in the said ship, her tackle, apparel, and furniture, in a cause of contract, civil and maritime, alleges as follows:

First. That the said ship at the several times hereinafter stated has been and is yet lying in this port bound on a distant voyage around Cape Horn to California. And the said H. J. Tibbetts and Frederick Griffing were and are the sole owners of the said ship, her tackle, apparel, and furniture, and are about to sail in said ship on such voyage, and the said H. J. Tibbetts was and is the master of said ship; and that the said owners and master employed Joseph Kissam as their agent to obtain passengers for the said ship in such voyage, and otherwise to act for them as their agent in respect to the said ship.

Second. That the libellant and other persons having seen that the said ship was advertised to sail, for California, and being desirous to go to that place with dispatch, they either in person or through their agent or agents, applied to the said Joseph Kissam for information in regard to the terms and accommodations of the said ship, and also as to the time of her sailing from this port, whereupon the said Joseph Kissam, so acting as agent for the ship, then and there represented and stated to the said libellant, or his agents, that the said vessel was of the very best class and condition, and a fast sailer, and in order that the cabin passengers might have all the comfort desired and plenty of space for exercise and air, that the said owners engaged not to take more than fifty cabin passengers, and that the passage money by reason thereof would be three hundred dollars a passenger, instead of two hundred and fifty dollars, the usual charge for such a voyage; whereupon the name of the libellant or his agent was left and taken, and a refusal or option given to him to go in such vessel upon such terms. That shortly thereafter the libellant or his agent again called, whereupon the said Kissam represented to him that another party called the "Morgan party," had taken twenty-six berths (meaning had engaged passage for twenty-six persons), and that there were other persons speaking for the remainder of the berths, and if the libellant and his friends desired passages they must engage the same without delay.

Third. That the libellant or his agents after seeing the said agent, examined the ship, found the said Tibbetts, the captain and part owner, went on board the said vessel with him, and thereupon the said captain and part owner exhibited to the libellant or his agents, parts of the vessel between the decks, where state rooms and separate apartments for each two passengers were about to be hastily prepared, the vessel having a small cabin as a freighting vessel, and thereupon the said captain and part owner represented and stated to the libellant or his agents, that accommodation would be prepared for fifty passengers, and that the passengers should not be crowded, and he marked out and represented to the said libellant or his agents where the said state rooms were to be, and the size of the same, and certain spaces which were to be left between the same for air and exercise, and represented that such state rooms were to consist of a range of separate apartments on each side of the said vessel, each of

which were to be at least six feet square, well-lighted, and ventilated, and between the same an open space or hall was to be left for ventilation and for promenade. That he also marked and showed the libellant or his agents, how and where the bulkead was to be built, separating the cabin from the steerage, and that only fifty cabin passengers were to be taken, and that such passengers should have an equal and impartial chance of drawing for berths, which were also to be made so nearly equal in accommodation as to afford but little, if any, choice. And that the said master and owners would not take freight to the inconvenience of the passengers, and that the said vessel would sail on or about the fifth day of January, 1849, and that in consequence of the pressure of passengers, it was necessary for the libellant to engage his passage without delay.

Fourth. That relying upon such representations and other like deceptive and unfair representations, this libellant proceeded to enter his name at \$300 for a passage, and it being thereupon represented to the libellant that he must actually pay his passage money to insure his passage, that such was the custom, and that many others had paid, the libellant or his agents, shortly afterwards, and on or about the second day of January instant, paid to the said owners or their agents, the sum of three hundred dollars, as and for the passage money in advance as a cabin passenger.

Fifth. That the libellant being a resident of Lockport, in this State, relying upon the representations aforesaid, prepared himself at much expense for such contemplated voyage; and after being so prepared, was in attendance in this city at the time appointed for the departure of the said vessel, and has been subjected to inconvenience, expense, and risk of loss, besides the loss of his time by the delay of the said vessel; and since his arrival at this port he has ascertained, and alleges to be the fact, that the said owners have broken their positive agreement with the libellant in various particulars; and that the representations aforesaid were deceptive, and calculated and intended to induce the libellant and others to pay or deposit their money as aforesaid, at a high price, and then to deprive them of the means of redress; relying upon the known anxiety of the said libellant and others, to proceed without delay to induce them to overlook the many variations from and neglects of the matter so represented to the libellant. That the said owners have made and fitted up in the ship aforesaid, between decks (calling it a cabin), a number of berths and pretended state rooms, or separate divisions, greater than the number so represented, and have filled up therewith the entire centre part of the vessel, which was to have been left open, preventing ventilation, and rendering them close, confined, and unhealthy, and have engaged to take and transport in and on board of the said vessel as cabin passengers, seventy-two persons, rendering it uncomfortable, and unsafe for the libellant to proceed in such vessel upon the said voyage. And many of said passengers, and who are represented to have paid, or to have engaged berths at three hundred dollars each, have been in part permitted to become passengers paying or engaging to pay for such passages only \$275, which circumstance of itself has contributed to crowd the vessel, and is con-

trary to the engagement made with the libellant or his agent, and the said vessel has also been over-crowded with cargo, and the passengers greatly inconvenienced thereby.

Sixth. That the libellant or his agents, and various others of the said passengers, on discovery of the matter, have demanded a return of the said passage money paid by them respectively, on failure to obtain a compliance with the representations and engagements aforesaid, but the same has been refused. That the libellant is unwilling to go in said vessel under such circumstances, and has sustained and will sustain damages, as he believes, beyond the amount of said passage money, to the amount of one thousand dollars.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, and furniture, and that the said H. J. Tibbetts and Frederick Griffing, and all persons claiming any right, title, or interest in the said ship, may be cited to appear and answer upon oath all and singular the matters aforesaid, and that the court will be pleased to decree the return of said passage money, with interest and costs, and payment of the damages aforesaid; and that the libellant may have such other and further relief as in law and justice he is entitled to receive; and that the said ship, her tackle, apparel, and furniture, may be condemned and sold to pay the libellant's demands.

E. C. GALUSHA.

Sworn, &c.

E. H. OWEN, Proctor.

F. B. CUTTING, Advocate.

NO. 116.—A LIBEL IN REM BY A PASSENGER AGAINST A SHIP, FOR DAMAGES
IN NOT BEING SUPPLIED WITH PROVISIONS.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Peter M'Donald, of the city of New York, who prosecutes for himself and on behalf of his wife, Alicia M'Donald, and also his children, Martin M'Donald, James M'Donald, Alicia M'Donald, Margaret M'Donald, and Catherine M'Donald, who are all infants under the age of twenty-one years, who were late passengers on board the British vessel known as the Aberfoyle, of Liverpool, whereof Thomas Jones was master, against the said vessel, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of damage, civil and maritime, alleges as follows:

First. That in the month of December, in the year one thousand eight hundred and forty-six, the said vessel, whereof the said Thomas Jones was master, being at the port of Liverpool, in England, destined on a voyage from thence to the port of New York; the said libellants embarked on board of said vessel, as passengers, and paid their freight from the said port of Liverpool to the said port of New York, and the agreement under which the said libellants embarked as passengers on board the said vessel, was in substance as follows:— That in consideration of the sum of twenty-two pounds sterling paid, the said libellant and his family were to be provided with a steerage passage from Liverpool to New York, in the ship Aberfoyle, with not less than ten cubic feet for luggage for each adult, and that three quarts of water per day, during said voyage, should be furnished to each adult; and that there should be furnished to each of said libellants to be computed as adults, per week, during said voyage, seven pounds of bread biscuit, flour, oatmeal, or rice, or a proportionate quantity of potatoes (five pounds of potatoes being computed as equal to one pound of the other articles), one-half of the quantity to be biscuit, to be issued not less often than twice a week, two children under fourteen years of age, and over one year, being computed as one adult; and the libellants state that they are all statute adults excepting the libellants, Ann M'Donald, Maria M'Donald, Alicia M'Donald, Margaret M'Donald, and Catherine M'Donald, who are all over one year and under fourteen years of age.

Second. That said voyage commenced about the twenty-sixth day of December last and continued for about sixty-nine days, when the said vessel arrived at the said port of New York, where she now is. That shortly after the sailing of the said vessel, he, the said Thomas Jones, by himself or his agents, on the high seas, withheld from, and refused to furnish to the said libellant and his family, the said water and the said provisions so as aforesaid by the said agreement to be furnished, whereby the said libellant and his family, during the said voyage or passage as aforesaid, suffered great want, hunger, and thirst, and starvation, to the great injury of the health, and deprivation of the comfort of the libellant and his family, and the libellant claims five hundred dollars damages.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellants pray, that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture; and that all persons having any interest therein may be cited to appear and answer all and singular, the matters hereinbefore set forth; and that this Honorable Court would be pleased to decree payment of the damages aforesaid, with costs, and that the said vessel may be condemned and sold to pay the

PETER M'DONALD.

HORACE DRESSER, Advocate.

Fourth. That for several days in succession after the last-mentioned occur-

rence, said B—— was in the habit of coming into said libellant's room, awakening her out of her sleep, attempting violence to her person, and using indecent and vulgar expressions, and exposing his person in a disgusting manner; that upon this libellant ordering said B—— from her presence and room, and threatening to inform the other cabin passengers, of his conduct towards her, said B—— shortly afterwards, and in the hearing of the other cabin passengers, ordered this libellant to remain in her room, and not to leave the same, for if the libellant attempted so to do he would send her amongst the steerage passengers. That this libellant was closely confined to her said state room for the space of two weeks, having her meals sent to her by said B——'s orders. That said B—— was also in the habit of falsely and maliciously slandering this libellant to other of the said passengers on board such ship during such voyage.

Fifth. That this libellant was much injured in health, fretted and annoyed in body and mind in consequence of such confinement and conduct of said B——, and was quite sick for some time after her arrival in said city of New York, and is damnified in the sum of three thousand five hundred dollars.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore she prays, that a warrant of arrest, in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said I—— B——, and that he may be required to answer, upon oath, this libel, and all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree the payment of the damages aforesaid, with costs, and that the libellant may have such other and further relief as in law and justice she may be entitled to receive.

J—— E——.

Sworn, July 3d, 1849,
before me,

GEORGE W. MORTON, U. S. Commissioner.

THOMAS W. SMITH, Proctor for Libellant.

W. Q. MORTON, Advocate.

No. 118. — LIBEL IN PERSONAM BY A SEAMAN AGAINST A MASTER AND MATE,
FOR A JOINT ASSAULT AND BATTERY.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Charles Grayman, late seaman on board the ship *Louvre*, whereof Weeks was master, and Whittlesey chief mate, against the master and mate in a cause of personal damage, civil and maritime, alleges as follows:

First. That sometime in the month of March, in the year one thousand eight hundred and forty-eight, the libellant shipped on board the said ship *Louvre* for a voyage from New York to Rotterdam, and back to New York.

That on or about the twenty-fifth day of March, while on the high seas, the libellant having been kept on deck longer than was usual, by reason of the illness of the cook, whose place he had volunteered to fill in addition to his other duties, was lying in his berth in the forecastle while it was his watch below, and while there heard the mate call him to come upon deck, whereupon he immediately arose, but before he had fairly got out of the berth the mate sprang down into the forecastle, and seizing the libellant by the throat began to drag him along the floor, and the said master having come down with an iron belaying pin, endeavored to strike the libellant with the same, but the libellant to avoid a blow with such a dangerous weapon, escaped from the hands of the master, and ran upon deck, and the master and mate followed him, and coming up with him near the galley the said master endeavored again to strike the libellant with the iron belaying pin, and the libellant not being able to escape from his reach was obliged to ward off the blow with his arm and hand, and in so doing received a severe stroke with the said iron belaying pin upon the back of his hand, whereby the same was much injured, and to this day bears the marks of the blows so received: that upon another occasion while engaged in hauling upon a rope, the said mate without the least cause or provocation, and without the slightest warning to the libellant, fell upon the libellant and beat him severely with his fist about the head and face, and the said master coming from the other side of the deck took a wooden belaying pin from the rail, and holding the libellant by the neck, struck the libellant five or six times on the head with the belaying pin, and with the assistance of the mate, then beat him with the same about his legs and body for some minutes; that by reason of such beating, the face and head of the libellant was very much bruised, and his body also injured; that he still feels the effects of such beating. And the libellant by reason of the premises claims to be entitled to demand of the said master and mate, damages to the amount of five hundred dollars and upwards.

Second. That on the arrival of the said ship in this port the libellant took out a warrant from the marine court of the State of New York, against the said Weeks and Whittlesey, for the above-mentioned assaults, but that they have fled from the jurisdiction of that court, or so concealed themselves that they cannot be taken, and this libellant is wholly without remedy unless by process from this court.

Third. That the said defendants have goods and chattels in this district, and credits in the hands of E. D. Hurlburt & Co., of the city of New York merchants.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Whereupon the libellant prays that a warrant of arrest, in due form of law,

according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said Weeks and Whittlesey, and that they may be required to appear and answer on oath, this libel, and all and singular the matters aforesaid, and that if they cannot be found, that their goods and chattels, and if none be found, that their credits and effects in the hands of E. D. Hurlburt & Co., of the city of New York, merchants, garnishees, may be attached, to the amount sued for, and costs. And that this Honorable Court would be pleased to decree the payment of the damages sustained by the libellant, with costs, and that he may have such other and further relief as in law, and justice he may be entitled to receive.

CHARLES GRAYMAN.

Sworn July 1, 1848,
before me,

CHAS. W. NEWTON, U. S. Commissioner.

W. R. BEEBE, Proctor.

E. C. BENEDICT, Advocate.

No. 119. — LIBEL IN REM FOR COLLISION.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Robert Schuyler and George L. Schuyler, both of the city of New York, against the brig Sea, her tackle, apparel, and furniture, and all persons lawfully intervening for their interest in the same, in a cause of collision, civil and maritime, alleges as follows:

First. That your libellants, before and at the time of the collision herein-after in the third article mentioned, were the owners and proprietors of a certain steamboat called the Niagara, with her steam engine, boilers, machinery, tackle, apparel, and furniture; which said steamboat your libellants used and employed in transporting passengers and freight between the port of New York and the port of Bridgeport in the State of Connecticut, and between which said ports she was regularly run, daily and every day, Sundays excepted, for the purposes aforesaid.

Second. That on Sunday, the ninth day of January, in the year 1848, the said steamboat Niagara, with her steam engine, boilers, fixtures, apparel, and furniture on board thereof, was safely moored, and lying at her usual berth alongside of the pier or dock at the foot of Market Street, East River, in said city of New York, where she had a perfect right to be; the said steamboat being then, and also at the time when she was run into as hereinafter mentioned, tight, staunch, strong, and in every respect well manned, tackled, apparelled, and appointed, and having the usual and necessary complement of officers and men, and that the master and crew engaged on board were on the lookout for the protection and safety of said vessel.

Third. That, on the morning of the said day, and while the said steamboat was safely moored as aforesaid, the said brig Sea, whereof Norton was master, on her way from Havre, in the kingdom of France, to her destination at said city of New York, came up the East River, between the Battery and Governor's Island, passing at the distance of about four or five hundred feet from the docks of said city on said river, with a strong wind from west-south-west, and with a flood tide; and then and there with great force and violence ran into and upon the said steamboat, and did thereby cause great damage and injury to the said Niagara, her guards, hull, and stern, and remained foul of and upon the said Niagara for some time, and until she (the brig Sea) swayed round, when she cleared and passed on.

Fourth. That the said brig Sea, before and at the time of the said collision, on a voyage from Havre to New York, was coming up the East River without a pilot, and with the design of anchoring or mooring in said river; that she was moving along rapidly, with the aid of wind and tide, carrying her fore and main-top sails; that from the improper and unskilful management of the persons navigating said brig, the anchors were not let go in due time to check her headway, and bring her round into the tide, nor were her sails properly and in season furled and clewed up so as to lessen her speed, but, on the contrary, the said brig was so improperly and unskilfully managed and navigated, in the particulars above mentioned, that she was driven upon and into the said steamboat as aforesaid.

Fifth. That the persons navigating the said brig Sea let one anchor go about abreast, or in the neighborhood of, the Fulton Street slip or pier, which partially checked her headway, but, notwithstanding, she continued to drift up the stream with the tide, heading partly across it, and in the direction of the Brooklyn shore; that the second anchor not being shackled, or otherwise in readiness, as it should have been, was not cast off into the stream until the said brig had drifted up to about opposite Catharine Street pier, and at a distance of three hundred feet or thereabouts from the said Niagara, and before a sufficient scope of cable had run out, or the two anchors had checked her headway, she ran into and afoul of the said Niagara, the stern of said brig striking with great force and violence against the starboard side of said steamboat, twenty-five feet from the bows, and cutting in the deck beams, fender-piece, and plank shears, besides twisting round and damaging her stern; that at the time of the striking, the said brig was heading round into the stream and towards the Brooklyn shore, and that the collision aforesaid was occasioned by the negligence, inattention, and want of proper care and skill on the part of said brig, her master and crew, and not from any fault, omission, or neglect on the part of the said Niagara, her master and crew.

Sixth. That the said brig Sea had not before, or at the time of the collision, a proper lookout and watch, to guard against the danger of a collision in a crowded port; that the crew of said brig were occupied on the forward part of the vessel — while she was drifting up as above-mentioned, after having let

go the first anchor — in shackling or otherwise preparing the second anchor to be cast into the stream; that the collision would not have occurred if both of said anchors had been in readiness, or had been suffered to run in due season, which would have checked her headway, or if the position of her yards had been changed, by hauling on the larboard braces, — which would have forced her off from the docks towards the middle of the stream; and that the master and crew of the Niagara, fearful, from the course pursued by those navigating the brig, that she would run into and upon their vessel, did every thing in their power, by getting out additional fasts to the wharf, and heeling their vessel over, to diminish the extent of the injury and damage to be caused by the blow.

Seventh. That the said steamboat Niagara, was so injured and disabled by the force and violence with which she was struck by the said brig Sea, as to render it necessary to take her to the dry dock for repairs, at a time when her services on the line in which she was engaged, were particularly valuable to her owners; and that the libellants, in consequence of the Niagara having been run into and foul of as aforesaid, have sustained damages for the hire and expenses of a steamboat to supply her place; for repairs to the said Niagara and to her fixtures, for her loss of time, for expenses of her master and crew, and otherwise, to the amount of one thousand dollars — which said damages were occasioned by the negligence, want of skill, and improper conduct of the persons navigating the said brig Sea, and not by or through any fault, negligence, or improper conduct on the part of the persons on board the Niagara, her master and crew.

Eighth. That since the said Niagara was so run foul of and into as aforesaid, these libellants have applied to the firm of John Ewell & Company, the consignees of said brig — the owners of said brig residing, as these libellants are informed and believe, in the town of Warren, and State of Rhode Island, where said brig belongs — and requested them to settle with these libellants for the damages sustained by them as above mentioned; but the said consignees deny that there is any liability on the part of said brig for the said damages, or any part thereof.

Ninth. That the said brig Sea is now lying in the port of New York, and within the jurisdiction of this court.

Tenth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said brig Sea, her tackle, apparel, and other furniture, and that all persons having any interest therein, may be cited to appear and answer, on oath, all and singular the matters aforesaid; and that this Honorable Court would be pleased to decree the payment of the damages as aforesaid, and that the said vessel may be condemned and sold to pay the same,

and that the libellants may have such other and further relief as in law and justice they may be entitled to receive. .

GEORGE L. SHUTLER.

Sworn, &c.,

ALEXANDER HAMILTON, JR., Proctor for Libellants.

W. Q. MORTON, Advocate.

No. 120. — LIBEL IN PERSONAM AGAINST THE OWNER OF A SHIP, FOR SALVAGE.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of William Peters, master of the Ship Amiable, for himself, and all others entitled, against John Jones, owner of the ship Hercules, in a cause of salvage, civil and maritime, alleges as follows :

First. That the libellant being at sea, and bound to the port of New York in the said ship Amiable, of which he was master, observed a brig with a signal of distress flying, and immediately made for the vessel, when he discovered that she was aground on the beach, on the south side of Long Island, and being hailed by the master thereof, was informed that she was the brig Rover, of New York, and had been aground for several hours, and had, by force of the wind and tide, worked so far into the sand, that he feared she would not float at high water without assistance, and asked the libellant to assist him.

Second. That the libellant thereupon consented to render such assistance as was in his power, and for that purpose let go his anchor and lay by her, and got out hawsers to her, and, by constant heaving of himself and his whole ship's company, prevented her working further up into the sand, and at high water, succeeded in heaving her off without injury — whereupon the said master informed the libellant that he had no means of paying him there — that he was bound to sea, and was very desirous of not being delayed, and that he would give the libellant a letter to his owner, the said John Jones, who would pay him his reasonable salvage. That said master thereupon gave the libellant a letter to said owner, informing him that the libellant had rendered him valuable assistance, whereby the said brig had been saved from probable loss, and was entitled to salvage.

Third. That the libellant therefore consented to allow the said brig to pursue her voyage, and on his arrival in the port of New York, he presented said letter to said owner, and for himself and his ship's company, and his owners, whose ship had been perilled in rendering such assistance, offered to accept the sum of five hundred dollars, if paid without delay or trouble to the libellant, although, as he had previously been informed, said brig and cargo were worth the sum of thirty thousand dollars, and the said sum of five hundred dollars was an inadequate salvage compensation, but said owner refused to pay the same, and to pay any more than fifty dollars.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that the said John Jones may be cited to appear and answer the matters aforesaid, and may be decreed to pay to the libellant, and the others so entitled, a full reasonable salvage compensation for the said assistance so rendered, and that they may have such other and further relief as in law and justice they may be entitled to receive.

WILLIAM PETERS.

Sworn, &c.

A. B., Proctor and Advocate for Libellant.

NO. 121. — LIBEL IN REM BY THE SEAMEN OF A GOVERNMENT VESSEL, AGAINST
A VESSEL AND CARGO FOR SALVAGE.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Joseph Smith, of said district, mariner, for himself and others interested as salvors against the schooner Josephine, her tackle, apparel, and furniture, and cargo, in a cause of salvage, civil and maritime, alleges as follows:

First. That the United States sloop-of-war Plymouth, being on her passage from Rio Janeiro, and being tight, staunch, and well found, and manned with a crew of about two hundred and fifty men, on or about the thirtieth day of September, and while on the high seas, the said ship then being on her passage to the port of Boston, and about eight or nine o'clock in the evening of that day, fell in with the wreck of the schooner Josephine, about four or five hundred miles from the port of New York, said schooner then drifting about at the mercy of the waves, and entirely abandoned by her crew, and being derelict, and having the appearance of having been broken open and partly plundered.

Second. That, after the discovery of said wreck, a boat was lowered from the said sloop, and a boat's crew sent on board to take possession of the said wreck so abandoned, and that after considerable exertion, they made fast to the said schooner with hawsers, and altering the course of the said sloop-of-war, proceeded to the port of New York with the said schooner and cargo in tow, and continued to tow her for about four days, when, having arrived at the port of New York, and in perfect safety, she was put in charge of the steamboat Hercules, who towed her to the wharf, in said port, where she now lies.

Third. That said schooner was at the time loaded with an assorted cargo, and was, at the time of her wreck bound from Richmond to the West Indies, and had it not been for the assistance so rendered to the said schooner and cargo, the same would have been entirely lost.

Fourth. That the libellant was on board said sloop at the time of saving said schooner, and assisted in saving her and her cargo.

Fifth. That the captain, officers, and crew of the said sloop-of-war, by reason of the service they so performed, and the risk and hazard they run in saving the said schooner and her cargo, deserve and are justly entitled to meet and competent salvage for such service, and to so much as has been and actually is usually allotted by this court to persons doing and performing the like service, with all charges and expenses attending the same.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Wherefore the libellant prays, that process in due form of law, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said schooner, her tackle, apparel, and furniture, and the cargo laden therein, and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree such a sum of money, or proportion of the value of the said schooner Josephine and her cargo, to be due to the libellant and others, salvors, as a compensation for their salvage service, as shall seem meet and reasonable, together with their costs and expenses in this behalf sustained, and that the said schooner, her tackle, apparel, and furniture, and the cargo laden therein, may be condemned and sold to pay the same, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

JOSEPH SMITH.

Sworn to before me, this 8th day
of Oct. 1846,

GEO. W. MORTON, U. S. Commissioner.

BURR & BENEDICT, Proctors and Advocates.

NO. 122. — LIBEL AGAINST A SHIP AND CARGO, FOR MILITARY SALVAGE.

(From *Hall's Admiralty*.)

To the Honorable Richard Peters, Esq., Judge of the District Court of the United States, in and for the District of Pennsylvania.

The libel of John Christian Brevoor, master, and John Schier, seaman, agent of the ship *Fair American*, now riding at anchor in the port of Philadelphia, respectfully sheweth:

First. That the said ship set sail from the port of Philadelphia, in the United States of America, on the twenty-second day of September, in the year of our Lord 1798, and proceeding on her voyage from the port aforesaid to the port of Havana, to wit, on the eighth day of October in the year aforesaid, between the hours of nine and ten in the morning, being then, to the best of

their judgement, between five and six miles from the aforesaid port of Havana, was brought to and captured by a French privateer schooner l'Enfant de la Grande Revenche, armed and cruising against the property of the citizens of the United States, commanded by Captain Roullis. That the commander of the aforesaid privateer and his officers, after looking over the papers of the Fair American, declared said ship and cargo good prize, and took from the ship Fair American, sailing as aforesaid, her officers and seamen, all except your libellants and Anthony Fachtman the cook, who were suffered to remain on board the said ship, and put on board from the said schooner, a prize master with six white men and two negroes, and ordered her course to be altered for Cape Français.

Second. That on the sixteenth day of October in the same year, between the hours of nine and ten in the morning, the said ship Fair American being then in latitude 28° 45' North and longitude 80° 30' West, under the command of the said French prize master, seamen, and negroes, and having been under their command and control upwards of forty-eight hours, your libellants then and there, being and remaining on board the said ship Fair American, assisted by the aforesaid Anthony Fachtman the cook, did, by great labor and enterprise, and at the manifest risk of their lives, recapture and take from the hands and control of the said French prize master, seamen, and negroes, the said ship Fair American, and did alter her course for the port of Charleston, in the State of South Carolina, being the nearest port in the United States, where the said ship arrived in perfect safety on the twenty-sixth day of October, in the year aforesaid. By reason whereof the said ship and cargo were saved to the owners and all others concerned, having received nevertheless considerable damage in her rigging and sails, &c., while in possession of the French prize master and crew aforesaid.

Third. That the said ship Fair American, her tackle, &c., and cargo were valued and estimated in the policies of insurance effected in Philadelphia at the time the said ship set sail from the port aforesaid, at the sum of thirty-eight thousand dollars or thereabouts, and that after the said ship arrived at the port of Charleston aforesaid, she was valued and estimated, with her cargo together, at the sum of thirty thousand one hundred and one dollars or thereabouts. That the cargo of the said ship alone amounted, by just valuation, to the sum of twenty-five thousand and fifty-one dollars or thereabouts; that the cargo aforesaid has been sold or disposed of, so that your libellants cannot now take benefit of process of your Honorable Court against the same.

Whereupon your libellants pray that the process of this Honorable Court may issue to attach and seize the said ship Fair American, now belonging to Stephen E. Dutilh, of Philadelphia, and that by a definitive sentence the said ship may be condemned and sold, and that such adequate and reasonable proportion may be awarded to your libellants for their labor in the premises as shall be found due to your libellants by the laws of the United States, or by the laws of nations in such cases esteemed and used. And your libellants

further pray, that process of your Honorable Court may also issue to call in Stephen E. Dutilh, owner of the said ship Fair American and part of the cargo aforesaid, and John Gourgon of Philadelphia, owner of the other part, and that they may be condemned to pay your libellants such reasonable salvage as to your Honor may deem just and proper.

J. INGERSOLL,

Proctor for Libellants.

NO. 123. — LIBEL AGAINST A VESSEL AND CARGO AS PRIZE.

(From *Hall's Admiralty*.)

To the Honorable John Sloss Hobart, Esquire, Judge of the District Court of the United States for the New York District.

The libel of Silas Talbot, Esquire, Commander of the United States ship-of-war the Constitution, on behalf as well of the United States as of himself and the officers and crew of the said ship, against the ship Amelia, her tackle, apparel, furniture and cargo:

The said libellant for and on behalf as aforesaid, doth hereby propound, allege, and declare to this Honorable Court, as followeth:

First. That pursuant to instructions for that purpose from the President of the United States, the libellant in and with the said United States ship-of-war the Constitution, and her officers and crew, did subdue, seize and take upon the high seas, the said ship or vessel called the Amelia, of the burthen of about 370 tons, with her apparel, guns, and appurtenances, and a valuable cargo on board of the same, consisting of cotton, sugar, and dry goods in bales, and hath brought the said ship or vessel and her cargo into the port of New York, where they now are.

Second. That the said ship or vessel called the Amelia, at the time of the said capture thereof, was armed with eight carriage guns, and was under the command of Citoyen Etienne Prevost, a French officer of Marine, and had on board besides the said commander thereof, eleven French mariners; that as this libellant hath been informed, the said ship or vessel with her said cargo, being the property of some person or persons to the said libellant unknown, sailed some time since from Calcutta, an English port in the East Indies, bound for some port in Europe: That upon her said voyage she was met with and captured as a prize by a French national corvette, called La Diligente, commanded by L. T. Dubois, who took out of her the captain and crew of the said ship Amelia with all the papers relating to her and her cargo, and placed the said Etienne Prevost and the said French mariners on board of her, and ordered her to St. Domingo for adjudication, as a good and lawful prize; and that she remained in the full and peaceable possession of the French from the time of the capture thereof by them, for the space of ten days, whereby this libellant is advised that as well by the laws of nations, as by the particular law of France, the said ship became and was to be considered as a French ship.

Third. This proponent doth allege, propound, and declare, that all and singular the premises are and were true, public and notorious, of which due proof being made, he humbly prays the usual process and monition of this court in this behalf to be made, and that the said Etienne Prevost, and all other persons having or claiming any interest in the said ship *Amelia*, her apparel, guns, appurtenances, and cargo, or any part thereof, may be cited in general and special, to answer the premises, and that right and justice may be duly administered in this behalf, and all due proceedings being had, that the said ship or vessel, her apparel, guns, appurtenances, and cargo, for the causes aforesaid, and others appearing, may, by the definitive sentence and decree of this Honorable Court be condemned as forfeited, to be distributed as by law is provided respecting the captures made by the public armed vessels of the United States; or if it shall appear that the same or any part or parcel thereof ought to be restored to any person or persons, as the former owner or owners thereof, then that the same may be so restored upon the payment of such salvage as by law ought to be paid for the same.

RICHARD HARRISON,
Proctor and Advocate for the Libellant. '1

No. 124.—SHORT FORM OF THE SAME, DECIDED TO BE THE PROPER FORM, IN
THE *EMPERESS*, BLATCHF. PR. CAS. 146.

To the Honorable William Marvin, Judge of the District Court of the United States for the Southern District of Florida.

The libel of Thomas J. Boynton, attorney of the United States for the Southern District of Florida, who libels for the United States and for all parties in interest against the steamship or vessel called the *Circassian*, her tackle, apparel, furniture, and cargo, in a cause of prize, alleges:

That pursuant to instructions from the President of the United States, Earl English, of the United States navy, in and with the United States ship-of-war the *Somerset*, her officers and crew, did, on the fourth day of May, in the year of our Lord one thousand eight hundred and sixty-two, subdue, seize, and capture on the high seas, as prize of war, the said ship or vessel called the *Circassian*, with a valuable cargo on board of the same; and that the said ship and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court; and that the said vessel and cargo are lawful prize of war, and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may by the proper process of this court, be duly notified of the allegations and prayer of this libel, and cited to appear and claim the same, that the nature, amount, and value of said cargo may be determined; and that, on proper proofs being taken and heard, and all due proceedings being had, the said vessel, the *Circassian*, together

with her tackle, apparel, furniture, and cargo may, on the final hearing of this cause, by the definitive sentence and decree of this court, be condemned, forfeited and sold as prize of war, and the proceeds distributed according to law.

THOMAS J. BOYNTON,
U. S. Attorney, S. D. of Florida.

NO. 125. — ORDER MADE UPON THE FOREGOING LIBEL.

AT CHAMBERS, May 19th, 1862.

Let monition and attachment issue, returnable May 26th, 1862.

WM. MARVIN, Judge.

NO. 126. — CLAIM BY MASTER OF THE PRIZE VESSEL.

And now comes Edward Hunter and says that he is the master of the said steamship *Circassian*, and as such is the lawful bailee of the said ship, her tackle, apparel, machinery, and furniture, and of her cargo, and he claims the same for the respective owners thereof.

And he further says that Zachariah C. Pearson, a British subject, residing in England, is the true and *bonâ fide* owner of the said steamship, and that no other person is the owner thereof, as appears by the register of said ship, and as he is informed and believes.

And he further says that he is informed and believes that the cargo of the said ship is owned by Leach, Harrison & Company, British merchants, having their house of trade in Liverpool, England, and by other persons residing in England and France, whose names are unknown to this deponent, and consists principally of wines, brandies, dry-goods, sardines, oils, coffee, and tea, and was taken on board at Bordeaux, in France, and is consigned by bills of lading to several and different persons in Havana, Cuba.

That said bills of lading, together with manifests of said cargo and the British register of said ship, is now in the possession of this Honorable Court, as he is informed and believes, and prays reference to the same for proofs herein.

And he further says that the said ship and the goods of her lading, at the time of shipment and capture, did belong to the persons hereinbefore named and referred to, as he is informed and verily believes, and that the same, if restored, will belong to the same persons and none others, as he has reason to believe and does believe.

And he prays restitution thereof.

EDWARD HUNTER.
W. C. MALONEY, Proctor.

Sworn to, before me this 24th day
of May, 1862.

GEORGE D. ALLEN,

Clerk U. S. D. Court.

No. 127. — FINAL DECREE OF DISTRICT COURT.

It appearing to the court that this ship, of the burthen of about 1,500 tons, having a British register, wherein Zachariah Charles Pearson, of London is stated to be the owner, and Edward Hunter the master, laden with a cargo from Bordeaux, in France, bound ostensibly for Havana, in Cuba, was captured on the fourth day of May, 1862, about thirty miles from Havana, by the United States armed vessel the Somerset, English, commanding, on the supposed ground of a purpose to break the blockade of the port of New Orleans, and was sent into this port for adjudication; and it further appearing that an attachment and monition have been regularly issued and returned served, and the master of said vessel has appeared and interposed a claim for the said vessel and cargo on account of whom it might concern; and it further appearing, upon the hearing, from the depositions of the master and others of the passengers and crew of the vessel, taken *in preparatorio*, in answer to the standing prize interrogatories, and from the papers, documents, and letters found on board the vessel at the time of her capture, that the voyage of this vessel was got up, commenced, and prosecuted by the owner, shippers, and underwriters, with the illegal and fraudulent purpose and intention, that the vessel should break the blockade of the port of New Orleans and should deliver her cargo in that port, and that the vessel was captured while engaged and employed in prosecuting and carrying out such unlawful intent; wherefore, for the causes and reasons herein above stated, it is ordered and decreed that the said vessel, her tackle, apparel, furniture, machinery, and appurtenances, and her cargo, be condemned and confiscated to the United States as prize of war.

WM. MARVIN, Judge.

No. 128. — ORDER UPON CLAIMANT MAKING A DEPOSIT, INSTEAD OF GIVING BONDS ON APPEAL.

It is ordered that the claimant in this cause, having deposited in the clerk's office of this court the sum of two hundred and fifty dollars, in treasury notes of the United States, that the same be received in lieu of bonds for that amount in the matter of appeal in this cause.

And it is further ordered that the appeal be now deemed perfected, this twenty-first day of June, A.D. eighteen hundred and sixty-two.

WM. MARVIN.

Entered at Chambers, June 21st, 1862.

GEORGE D. ALLEN, Clerk.

No. 129. — LIBEL FOR RESTITUTION OF A CAPTURED SHIP AND CARGO.

(*From Hall's Admiralty.*)

To the Honorable Richard Peters, Esq., &c.

The libel of Robert Findley, &c.

First. That your libellants are the true owners of the ship William, James

Leggat master, now lying in the port of Philadelphia, and within the jurisdiction of this Honorable Court.

Second. That on the third day of May last, the said ship being on her voyage from Bremen to Potomac River, in the State of Maryland, and within nine miles of the sea coast of the United States, received an American pilot on board for the purpose of conducting her safely up the Chesapeake Bay to the place of her destination, and after receiving the said pilot she continued on the same course until she had arrived within about two miles of Cape Henry, the southern promontory of Chesapeake Bay, in five fathom water, and as near the shore as the pilot thought it proper to go; when she was forcibly seized and taken into possession by a number of armed men under the command of Peter Joanene, captain of an armed schooner then coming out of Chesapeake Bay, called the Citizen Genet, and bearing the national colors of the republic of France, as a prize to the said schooner, and hath since been detained and now is in the possession of the said Peter Joanene, who also then and there made prisoners of the captain, officers, and crew of the said ship William, and them as prisoners doth detain.

Third. That not admitting that the said schooner the Citizen Genet, was duly commissioned and authorized to make prizes of vessels belonging to British subjects, which they pray may be inquired of, your libellants humbly insist that according to the premises, the said ship William was, at the time of her being so taken, upon neutral ground, within the territorial jurisdiction and under the protection of the United States, who are now at peace with the king and people of Great Britain, and that the said Peter Joanene and the persons under his command had no permission or authority from or under the United States to capture British vessels within that distance from the sea coast, to which by the laws of nations and the laws of the United States, the right and jurisdiction of the United States extended.

Inasmuch, then, as the said capture and detention of the said ship William, and the captain, officers, and crew thereof, are manifestly unjust, and contrary to the laws of nations and the laws of the United States, your libellants humbly pray that the said ship William, her cargo, tackle, apparel, and furniture, and all other things belonging to her may, by the sentence and decree of this Honorable Court, be restored to your libellants. That the said captain, officers, and crew thereof may be relieved from imprisonment for the purpose of navigating her to her destined port, and that full satisfaction may be made by the said Peter Joanene and all others concerned, as well for the said unlawful capture and detention of the said ship, as for the imprisonment of the said captain, officers, and crew thereof, and all damages, charges, and expenses incurred thereby.

For which end your libellants humbly pray process of attachment, arrest, and monition, as in like cases is customary.

RAWLE,
Proctor pro Libellant.

NO. 130. — LIBEL OF INFORMATION FOR A FORFEITURE FOR BEING FITTED
OUT FOR THE SLAVE TRADE.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel and information of Benjamin F. Butler, attorney of said United States for the said Southern District of New York, who prosecutes in this behalf for the said United States, and being present here in Court in his own proper person, in the name and on behalf of the said United States, against the schooner Patuxent, her tackle, apparel, furniture, guns, and appurtenances, and goods and effects found on board thereof, in a certain cause of seizure and forfeiture, alleges and informs as follows :

First. That a certain schooner or vessel called the Patuxent, of the burthen of ninety-five tons and fifty ninety-fifth parts of a ton, or thereabouts, being the property of a citizen or citizens of the United States, was heretofore, to wit, on or about the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-five, by some person or persons being a citizen or citizens of the said United States, or residing within the same, to the said attorney unknown, for himself or themselves, or for some other person or persons, either as master, factor or factors, owner or owners, fitted, equipped, and prepared, within a port of the United States, that is to say, within the port of New York, in the said Southern District of New York, and within the jurisdiction of the United States, for the purpose of carrying on trade or traffic in slaves to some foreign country, to the said attorney unknown, contrary to the provisions of the first section of the act of Congress, approved on the twenty-second day of March, 1794, entitled, "An Act to prohibit the carrying on the slave trade, from the United States to any foreign place or country."

Second. That the said schooner called the Patuxent, being the property of a citizen of the United States, was heretofore, to wit, on or about the said twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-five, by the said Nathaniel T. Davis, as master, for himself, fitted, equipped, and prepared, within the port of New York, in the said Southern District of New York, for the purpose of carrying on trade or traffic in slaves to some foreign country, to the said attorney unknown, contrary to the provisions of the first section of the act of Congress in the preceding article mentioned.

Third. That the said schooner called the Patuxent (so owned as in the second article aforesaid specified), was heretofore, to wit, on or about the twenty-sixth day of June, in the year of our Lord one thousand eight hundred and forty-five, by the said Nathaniel T. Davis so being a citizen of the United States, caused to sail from the said port of New York, for the purpose of carrying on trade or traffic in slaves to some foreign country to the said attorney unknown, contrary to the provisions of the first section of the said act of Congress in the first article of this libel mentioned.

Fourth. That the said schooner called the Patuxent, being the property of the said Nathaniel T. Davis, a citizen of the United States, was heretofore, to wit, on or about the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-five, by the said Nathaniel T. Davis, for himself as master of said schooner, fitted, equipped, and prepared within the said port of New York, for the purpose of procuring from some foreign kingdom, place, or country, to the said attorney unknown, the inhabitants of such kingdom, place, or country, to be transported to some foreign country, port, or place, to the said attorney unknown, and to be sold and disposed of as slaves, contrary to the provisions of the first section of the act of Congress in the said first article of this libel mentioned.

Fifth. That the said schooner called the Patuxent, so owned as in the fourth article of this libel mentioned, was, on or about the said twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-five, by the said Nathaniel T. Davis, caused to sail from the said port of New York, for the purpose of procuring from some foreign kingdom, place, or country to the said attorney unknown, the inhabitants of such kingdom, place, or country, to be transported to some foreign country, port, or place to the said attorney unknown, and to be sold or disposed of as slaves, contrary to the form of the statute in such case made and provided, being the first section of the aforesaid act of Congress, approved on the twenty-second day of March, 1794.

Sixth. That the said schooner called the Patuxent, so owned by the said Nathaniel T. Davis, a citizen of the United States, was heretofore, to wit, on or about the twenty-fifth day of September, in the year of our Lord one thousand eight hundred and forty-five, employed and made use of by the said Nathaniel T. Davis, so being a citizen of the United States, in the transportation and carrying of slaves, from some foreign country or place to the said attorney unknown, to some other foreign country or place to the said attorney unknown, contrary to the provisions of the first section of the act of Congress approved on the tenth day of May, 1800, entitled, "An Act in addition to the Act entitled, 'An Act to prohibit the carrying on the slave trade from the United States to any foreign place or country.'"

Seventh. That the said schooner called the Patuxent, so owned by the said Nathaniel T. Davis, a citizen of the United States, heretofore, to wit, on the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-five, was by him the said Nathaniel T. Davis, for himself as owner, fitted, equipped, and prepared in the port of New York, in the Southern District of New York, and within the jurisdiction of the United States, for the purpose of procuring negroes, mulattoes, or persons of color from some foreign kingdom, place, or country, to the said attorney unknown, to be transported to some other port or place to the said attorney unknown, to be held, sold, or otherwise disposed of as slaves, or to be held to service or labor, contrary to the provisions of the second section of the act of Congress approved on the

twentieth day of April, 1818, entitled, "An Act in addition to an Act to prohibit the introduction of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight;" and to repeal certain parts of the same.

Eighth. That the said schooner or vessel so owned as aforesaid, was heretofore, to wit, on the twenty-sixth day of June, in the year of our Lord one thousand eight hundred and forty-five, by the said Nathaniel T. Davis fitted, equipped, and prepared, and caused to sail from the said port of New York, for the purpose of procuring negroes, mulattoes, and persons of color, from some foreign kingdom, place, and country to the said attorney unknown, to be transported to some port or place to the said attorney unknown, to be held, sold, or otherwise disposed of as slaves, or to be held to service or labor, contrary to the provisions of the second section of the Act of Congress in the seventh article of this libel mentioned.

Ninth. That the ship Yorktown, being a commissioned and armed vessel of the United States of America, commanded by Charles H. Bell, of the navy of the United States, was, during the month of September, in the year of our Lord one thousand eight hundred and forty-five, cruising on the coast of Africa, and while so cruising, to wit, on the twenty-seventh day of September, 1845, at or near Cape Mount, on said coast, seized and took the said schooner called the Patuxent, the said schooner then and there being employed in carrying on trade, business, and traffic contrary to the true intent and meaning of the acts of Congress aforesaid, approved respectively on the twenty-second day of March, 1794, and May tenth, 1800, and that said schooner has been sent to the United States for adjudication, and is now lying within the Southern District of New York, and within the jurisdiction of this court.

Tenth. That by reason of the premises, and by force of the statutes in such case made and provided, the said schooner called the Patuxent, together with her tackle, apparel, furniture, appurtenances, guns, and the goods and effects found on board thereof, have become forfeited.

Eleventh. That all and singular the premises are and were true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Wherefore the said attorney prays the usual process of attachment against said schooner, her tackle, apparel, and furniture, and appurtenances and goods and effects, and the monition of this Honorable Court, in this behalf to be made, and that all persons interested in the said schooner, or in her tackle, apparel, furniture, guns, appurtenances or the goods and effects found on board thereof, may be cited to answer the premises, and all due proceedings being had, that the said schooner, with her tackle, apparel, furniture, guns, appurtenances, and goods and effects found on board thereof, may, for the causes aforesaid, and others appearing, be condemned by the definitive sentence and decree of this Honorable Court, as forfeited to the use of the said

United States, according to the form of the statutes in such case made and provided.

B. F. BUTLER, U. S. District Attorney.

No. 181. — LIBEL OF INFORMATION IN REM AGAINST A STEAMBOAT, TO RECOVER
PENALTIES FOR NON-INSPECTION OF BOILERS, &c.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of information of J. Prescott Hall, Attorney of the United States for the said Southern District of New York, who prosecutes for the said United States in this behalf, and being present here in court, in his own proper person, in the name and on behalf of the said United States against the steamboat Harlequin, her tackle, apparel, and furniture, in a cause of seizure, alleges and informs as follows:

First. That by an act of Congress of the United States of America, approved on the seventh day of July, in the year one thousand eight hundred and thirty-eight, entitled "An Act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part, by steam;" it was among other things provided, that it should be the duty of the owners and masters of steamboats, to cause the inspection required by the fourth section of said act, to wit, an inspection of the hull of such steamboats, to be made at least once in every twelve months. And the examination required by the fifth section of said act, to wit, an examination of the boilers and machinery of such steamboats, to be made at least once in every six months.

That after the passage of the said act, to wit, on divers days and times, between the fifth day of June, in the year of our Lord, one thousand eight hundred and forty-nine, and the twentieth day of June, in the year last aforesaid, a certain vessel being a steamboat called the Harlequin, then being owned in whole or in part, by a citizen or citizens of the United States, to the said attorney unknown, was used and employed in the transportation of passengers, and did carry passengers on the navigable waters of the said United States, to wit, from Port Richmond in the State of New York, in the said Southern District of New York, and Bergen Point in the State of New Jersey, the hull of said steamboat not having been inspected pursuant to the provisions of the fourth section of said act of Congress, at any time within twelve months prior to the said fifth day of June, or the said twentieth day of June, or any day intervening between the said fifth day of June, and the said twentieth day of June, in the year one thousand eight hundred and forty-nine. By reason whereof, and by virtue of the said act of Congress, the owner or owners, and master of the said steamboat, being a vessel propelled in whole or in part by steam, forfeited and became liable to pay to the said United States the sum of five hundred dollars, for the payment of which sum the said steamboat hath become liable to be seized and proceeded against summarily by way of

libel, and for the recovery of which, this civil and maritime cause is now instituted.

Second. That after the passage of the aforesaid act of Congress, to wit, on divers days and times, between the fifth and twentieth days of June, in the year of our Lord one thousand eight hundred and forty nine, a certain vessel being a steamboat, called the Harlequin, propelled in whole or in part by steam, then being owned by a certain person or persons to the said attorney unknown, then and still being a citizen or citizens of the United States, was used and employed in the transportation of passengers, and did carry passengers on the navigable waters of the United States, that is to say, between Port Richmond in the State of New York, in the Southern District of New York aforesaid, and Bergen Point in the State of New Jersey; the boilers and machinery of said steamboat not having been examined pursuant to the provisions of the fifth section of said act Congress, at any time within six months prior to the said fifth day of June, or the said twentieth day of June or any day intervening between the said fifth day of June, and the said twentieth day of June, in the year one thousand eight hundred and forty-nine. By reason whereof and by virtue of the said act of Congress, the owner or owners and master of the said steamboat called the Harlequin, forfeited and became liable to pay to the said United States the further sum of five hundred dollars, for the payment of which sum the said steamboat hath become liable to be seized and proceeded against summarily by way of libel, and for the recovery of which this civil and maritime cause is now instituted.

Third. That after the passage of the said act, to wit, on the twentieth day of June, in the year one thousand eight hundred and forty-nine, the owner or owners of a certain vessel being a steamboat, called the Harlequin, propelled in whole or in part by steam, did transport passengers, in and on board of said vessel, upon the navigable waters of the said United States, to wit, on waters between Port Richmond in the State of New York, in the said Southern District of New York and Bergen Point in the State of New Jersey, without having first obtained from the proper officer, to wit, the Collector of the Customs for the Port and District of the city of New York, a license under the laws of the United States, existing at the time of the passage of said act. That by reason of the premises, and by virtue of the said act, the owner or owners of the said steamboat forfeited and became liable to pay to the said United States the further sum of five hundred dollars, for the payment of which sum the said steamboat hath become liable to be proceeded against summarily by way of libel, and for the recovery of which this civil and maritime cause is instituted.

Fourth. That all and singular the premises aforesaid are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the said Attorney of the said United States, on behalf of the said United States, prays the usual process and monition against the said steamboat, and her tackle, apparel, and furniture in this behalf to be made, and that all

persons interested in the said steamboat and her tackle, apparel, and furniture, may be cited to answer the premises, and that this Honorable Court may be pleased to decree for the penalties aforesaid, and that the said steamboat may be condemned and sold to pay the several penalties aforesaid with costs, and for such other relief as shall to law and justice appertain.

J. PRESCOTT HALL,
U. S. District Attorney.

NO. 132. — A LIBEL OF INFORMATION IN REM AGAINST A VESSEL SEIZED BY A GOVERNMENT VESSEL FOR BEING ENGAGED IN THE SLAVE TRADE.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of information of J. Prescott Hall, Attorney of the said United States for the said Southern District of New York, who prosecutes in this behalf for the said United States, and being present here in court in his own proper person, in the name and on behalf of the said United States, against the brig Susan, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of seizure and forfeiture, alleges and informs as follows:

First. That the brig Perry, a commissioned vessel of the United States of America, and belonging to the navy thereof, heretofore, to wit, on the fifth day of February, in the year one thousand eight hundred and forty-nine, being under the command of John A. Davis, a lieutenant commanding in the navy of the United States, did, on the high seas, off the coast of Brazil, that is to say, about three miles outside of Round Island near Rio de Janeiro, on said coast of Brazil, seize and take a certain brig or vessel called the Susan, belonging to a citizen or citizens of the United States, of the burthen of two hundred and sixty tons or thereabouts; which said brig or vessel was then and there employed in carrying on trade, business, and traffic in slaves, contrary to the true intent and meaning of the act of Congress of the said United States, approved on the tenth day of May, in the year of our Lord eighteen hundred, entitled "An Act in addition to the Act entitled 'An Act to prohibit the carrying on the slave trade from the United States to any foreign place or country,'" and that by reason of the premises in this article stated, and by force of the fourth section of the said act of Congress, the said brig Susan, together with her tackle, apparel, and guns, and the goods and effects (other than slaves) found on board thereof, became and were forfeited.

Second. That the said brig Perry, being commissioned, belonging to the navy, and commanded as in the preceding article is alleged, did, heretofore, on the fifth day of February, in the year 1849, on the high seas, and at or about the point or place in said preceding article mentioned, seize and take the said brig Susan, which said brig was then and there employed in carrying on trade, business, and traffic in slaves, contrary to the true intent and meaning of the act

of Congress, of the said United States, approved on the twenty-second day of March, in the year 1794, entitled "An Act to prohibit the carrying on of the slave trade from the United States to any foreign place or country, and that by reason of the premises in this article stated, and by force of the before mentioned fourth section of the said act of Congress, approved on the tenth day of May, in the year 1800, the said brig Susan, together with her tackle, apparel, and guns, and the goods and effects (other than slaves) found on board thereof, became and were forfeited."

Third. That on board said brig Susan were found two blacks or mulattoes, supposed to be, or at and before the time of said seizure before alleged, to have been, slaves.

Fourth. That the said brig Susan was heretofore, on or about the eighth day of July, in the year 1848, by some person or persons, being a citizen or citizens of the said United States, or resident within the same, to the said attorney unknown, fitted out within the port of New York in the Southern District of New York, and caused to sail from and out of said port, for the purpose of carrying on trade and traffic in slaves, to some foreign country, to the said attorney unknown, and for the purpose of procuring from some foreign country, to the said attorney unknown, the inhabitants of that country, to be transported to some other foreign country, to said attorney also unknown, contrary to the provisions of the first section of the act of Congress of the said United States, approved on the twenty-second day of March, in the year 1794, entitled "An Act to prohibit the carrying on the slave trade from the United States to any foreign place or country."

Fifth. That the said brig Susan, being the property of and owned by a certain person or certain persons being a citizen or citizens of said United States, or residing therein, was heretofore, to wit, on the fifth day of February, in the year 1849, employed and made use of by some person or persons being a citizen or citizens of said United States, or residing within the same, to the said attorney unknown, in the transportation and carrying of slaves from some foreign country or place, to the said attorney unknown, to some other foreign country or place, to the said attorney unknown, contrary to the provisions of the first section of the act of Congress of the said United States, approved on the tenth day of May, in the year 1800, entitled, "An Act in addition to the Act entitled 'An Act to prohibit the carrying on the slave trade from the United States to any foreign place or country.'"

Sixth. That the said brig Susan, being the property of and owned by citizens of the said United States, was heretofore, on the fifth day of February, in the year 1849, employed and made use of in the transportation and carrying of slaves, from some foreign country or place to the said attorney unknown, to some other foreign country or place to the said attorney also unknown, contrary to the provisions of the said first section of the act of Congress in the preceding article specified.

Seventh. That the said brig Susan, being the property of and owned by citi-

zens of the said United States, was heretofore, on the fifth day of February, in the year 1849, employed and made use of in the transportation and carrying of slaves from some foreign country or place, to wit, from the coast of Africa, to some other foreign country or place, to wit, to the Empire of Brazil, and, to wit, from the Empire of Brazil to the coast of Africa, contrary to the provisions and the form and effect of the said first section of the said act of Congress, in the fifth article of this libel mentioned.

Eighth. That the said brig Susan, together with her tackle, apparel, furniture, appurtenances, guns, and the goods and effects found on board thereof, having been so seized as aforesaid, has been sent to the United States for adjudication, and is now lying within the Southern District of New York and within the jurisdiction of this court.

Ninth. That by reason of all and singular the premises aforesaid, and by force of the statutes in such case made and provided, the aforementioned brig Susan, together with her tackle, apparel, furniture, appurtenances, guns, and the said goods and effects became and are forfeited to the United States.

Tenth. That all and singular the premises aforesaid are and were true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the said attorney prays the usual process of attachment against the said brig, her tackle, apparel, furniture, appurtenances, and guns, and the goods and effects on board of her, and the monition of this Honorable Court in this behalf to be made, and that all persons interested in the before mentioned brig, her tackle, apparel, furniture, appurtenances, guns, and the said goods and effects found on board thereof, may be cited to answer the premises, and all due proceedings being had thereon, that the said brig, her tackle, apparel, furniture, appurtenances, guns, and the goods and effects found on board thereof, may, for the causes aforesaid, and others appearing, be condemned by the definitive sentence and decree of this Honorable Court as forfeited to the United States, according to the form of the statutes of said United States in such case made and provided, and that the said brig, her tackle, apparel, furniture, appurtenances, guns, and the goods and effects found on board thereof, may be sold and the proceeds thereof distributed and disposed of according to law.

J. PRESCOTT HALL,

U. S. Dist. Att'y.

NO. 133. — LIBEL IN PERSONAM BY A CHARTERER ON A VERBAL CHARTER.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel and complaint of William Quirk, of Wilmington, North Carolina, against Peter Clinton and John G. Attridge, in a cause of contract, civil and

maritime, and thereupon the said William Quirk alleges and articulately propounds as follows:

First. That the said Peter Clinton being part owner, and the said John G. Attridge part owner and master of the brig Growler, of New York, on or about the sixteenth day of June, 1848, by James Smith, his agent and broker, chartered said brig to the libellant for a voyage from the port of New York to Wilmington, North Carolina, and thence to London, to be provided with, and to carry a full cargo of turpentine under and on deck, from Wilmington to London, at the freight of four shillings sterling per barrel for turpentine under deck, and three shillings and sixpence sterling per barrel on deck, and primeage of five per cent on the amount of freight, the amount of the charter to be paid on the discharge of the cargo in London; fifteen running lay days in Wilmington, for loading, and fourteen running lay days in London, for discharging. The vessel to leave New York for Wilmington on or before the twentieth day of June, then instant, and in case there should not be thirteen feet of water on the bar at Wilmington, the libellant was to pay light-erage on the cargo, sufficient to load her to thirteen feet draft, and the vessel to be consigned in Wilmington to J. & D. McRea, and in London to Charles Briggs.

Second. That said charter was made verbally and not in writing; and a few days after the same was so agreed on, the said defendants having had a better offer for said vessel, as the libellant has been informed and believes, chartered her to other persons for a different voyage, and refused to complete and fulfil said charter to the libellant.

Third. That the libellant has lost and sustained damage to the amount of six hundred and twenty-dollars and upwards, which he insists the said defendants are bound in law to pay him, but which the defendants refuse to pay.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays, that a warrant of arrest, in due form of law, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said Peter Clinton and John G. Attridge, and that they may be compelled to appear and answer upon oath all and singular the matters aforesaid, and if they cannot be found, that an attachment may issue against their goods and chattels, and if none be found, that their credits and effects in the hands of Matthew Clinton and Peter Clinton, of said district, garnishees, be attached, and that this Honorable Court would be pleased to decree payment of the damages aforesaid, with costs, and that the libellant may have such other and further relief as he may be entitled to receive.

WILLIAM QUIRK,
By JAMES SMITH,
His Attorney and Agent.

Sworn to this second day of August, by
James Smith, the attorney in fact and
agent of the libellant, who is absent
more than 100 miles from the city of
New York, before me,

GEORGE W. MORTON, U. S. Commissioner.

BURR & BENEDICT, Proctors.

NO. 134. — PROCEEDINGS UNDER THE "ACT TO LIMIT THE LIABILITY OF SHIP-OWNERS, 9 STAT. AT L. 635." — PETITION BY CLAIMANT TO BOND VESSEL LIBELLED.

To the Honorable Charles L. Benedict, Judge of the District Court of the United States for the Eastern District of New York.

The petition of "The Norwich and New York Transportation Company," respectfully sheweth:

That your petitioners are a foreign corporation, created by, and existing under the laws of the State of Connecticut, and are the sole owners of the said steamboat City of Norwich, her engine, tackle, apparel, and furniture.

That early in the morning of the eighteenth day of April last past, a collision occurred upon the waters of Long Island Sound, near Huntington Light, on said Long Island Sound, between the said steamboat City of Norwich, an American vessel, of which your petitioners were then the owners, and the schooner or vessel called the General S. Van Vliet, the said steamboat being then bound on her regular trip from the city and port of New London, in the State of Connecticut, to the city and port of New York, with a cargo consisting of goods, wares, and merchandise on board.

That in consequence of such collision, the said steamboat was set on fire, and soon afterwards sunk, with all her said cargo on board of her.

That such collision and fire were occasioned or incurred without the design, neglect, privity, or knowledge of your petitioners.

That on or about the twenty-third day of August last past, the libel herein was filed by the above-named libellants against the said steamboat, &c., to recover the sum of eight thousand dollars for damages, which the libellants allege they have sustained by reason of the destruction of certain articles or merchandise specified in said libel, which, it is therein alleged, were shipped on board of said steamboat, and upon the filing of said libel, process was issued out of this court, at the instance of the said libellants, under which the said steamboat, &c. (the same having been raised and brought to the port of New York), was seized by the Marshal of the said Eastern District, and is now in the custody of this court.

That the said steamboat City of Norwich was freighted with a large cargo, consisting of goods, wares, and merchandise, consigned and belonging

* *Vide ante*, page 494.

to a very large number of individuals, companies, and firms, whose names are unknown to your petitioners, and the same was to be delivered by said steamboat at the city of New York, and that by reason of the said collision and fire, the said steamboat became a total wreck and was unable to proceed on her said trip aforesaid.

And your petitioners further show that the owners and consignees of the goods on board of said steamboat were very numerous, and your petitioners have reason to believe and do believe, that in addition to the claim made by the libellants herein other claims on behalf of the owners of other portions of said cargo on board of said steamboat at the time of said collision and fire, will be made against your petitioners, as owners of the said steamboat, &c., or against the said steamboat, her engine, tackle, apparel, and furniture, and suits and proceedings will be instituted to recover the same, which claims, if established, will greatly exceed the value of said steamboat, &c., and of her freight pending at the time of such collision, fire, and loss.

Your petitioners therefore pray that they may be declared as entitled to the benefit of the act of Congress of the United States, entitled "An Act to Limit the Liability of Ship-Owners, and for other purposes," passed on the third day of March, 1851 (9 U. S. Stat. at Large, page 635), that the said steamboat, her engine, tackle, apparel, and furniture, and her freight then pending at the time of the said collision and fire, may be appraised by appraisers to be appointed by this court. That your petitioners may be authorized to give a stipulation with good and sufficient sureties, according to the rules and practice of this court for such appraised value, such stipulation to be for the benefit of the libellants herein (in case they shall establish the liability of the said steamboat) and of all other claimants who may by actions or otherwise intervene, and prove to be legally entitled to compensation for losses sustained by reason of said collision and fire, in proportion to the amount of the respective losses of all such claimants, and that upon the due execution of such stipulation, the said steamboat, her engine, tackle, apparel, and furniture, as well as the owners thereof, may be discharged from all liability for all losses incurred by reason of such collision and fire, and that your petitioners may have such other or further relief as may be just and proper in the premises, and as this court shall be pleased to grant.

And they will ever pray, &c.

THE N. & N. Y. TRANS. CO.

By DAVID SMITH, Pres. [L. S.]

J. W. C. LEVERIDGE, Proctor.

NO. 135. — VERIFICATION WHEN A CORPORATION IS A PARTY, BY AN OFFICER OF SUCH CORPORATION.

Southern District of New York, ss. 1

David Smith of the city of Norwich, and State of Connecticut, being duly sworn, says that he is the president of the Norwich and New York Transporta-

tion Company, the petitioners named in the above petition, and one of the officers of said company; that the seal affixed to the above petition is the corporate seal of the said company, and was affixed thereto, by authority of said company, and deponent signed the same as such president by like authority. And the deponent further says that he has heard the above petition read and knows the contents thereof, and that the same is true, of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

DAVID SMITH, President.

Sworn, this 2d day of October, 1866,
before me,
GEO. F. BETTS,
U. S. Commissioner.

No. 136. — NOTICE OF MOTION ON THE FOREGOING PETITION.

SIR, — Please to take notice that upon the annexed petition and the claim herein, and the libel, process, and proceedings in this cause, an application will be made to this court at Chambers of the Judge thereof in the United States Court Room Building, in the city of Brooklyn, on the eighth day of October instant, at eleven o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order in accordance with the prayer of the said petition.

Dated October 2d, 1866.

Yours, &c.,

J. W. C. LEVERIDGE,

Proctor for Petitioners, Owners, and Claimants.

To H. C. PLACE, Esq.,

Proctor for Libellants.

No. 137. — ORDER FOR A REFERENCE TO ASCERTAIN AND REPORT THE PRESENT VALUE OF THE VESSEL, AND THAT THE CLAIMANTS GIVE A STIPULATION IN THE AMOUNT SO REPORTED.

At a stated term of the District Court of the United States of America, for the Eastern District of New York, held at the United States Court Rooms in the city of Brooklyn, on the twenty-sixth day of January, in the year of Our Lord one thousand eight hundred and sixty-seven.

Present, The Honorable Charles L. Benedict, District Judge.

On reading and filing the petition of "The Norwich and New York Transportation Company," the owners and claimants of the above-named steamboat City of Norwich, her engine, tackle, apparel, and furniture, together with admission of service thereof, and of notice of motion on the Proctor of the Libellants herein, and due proof having been filed of the publication of an order

heretofore made in this cause, requiring all parties having claims against the said steamboat, or her owners, arising out of the collision, fire, and loss, mentioned in said petition, to show cause, if any they have, why the prayer of the said petitioners should not be granted, &c., and after hearing the counsel of the said petitioners in support of the said petition, and R. H. Huntley, Esq., of counsel for the libellants in this cause, and also the counsel for other parties who claim damages by reason of losses, alleged to have been sustained by them, occasioned by the collision and fire mentioned in said petition, in opposition thereto, and the owners and claimants of the said steamboat, &c., having thereafter applied to bond the said steamboat, according to the rules and practice of this court, in admiralty, and it appearing that the present value of the said steamboat, &c., is the same as her value immediately previous to said accident, and mature deliberation being thereupon had, it is, on motion of J. W. C. Leveridge of counsel for said petitioners, ordered, that it be referred to Charles W. Newton, Esq., one of the commissioners of this court, upon at least two days' notice to all proctors for the libellants, who have filed libels against the said steamboat to ascertain, appraise, and report to this court the present value of the said steamboat, her engine, tackle, &c., and that upon the coming in of said report, the said the Norwich and New York Transportation Company as such owners and claimants of said steamboat, &c., give a stipulation with sufficient sureties according to the course and practice of this court on the bonding of vessels, in the amount so reported, and that such stipulation be for the benefit of the libellants herein (in case they shall establish the liability of the said steamboat), and of all persons and parties who may by due proceedings in this court show themselves entitled to liens upon said vessel, by reason of such collision and fire, and that upon the entering into and filing of such stipulation, the said steamboat, her engine, boiler, tackle, apparel, and furniture be discharged from all liability for losses and damages occasioned to all the parties for whose benefit the said stipulation is given.

And it is further ordered that the said libellants, and all other persons and parties having liens on the said steamboat, her engine, boiler, tackle, apparel, and furniture, for loss or damage by reason of such collision and fire be, and they are hereby declared to be bound by this order.

SAMUEL T. JONES, Clerk.

No. 138. — STIPULATION FOR VALUE IN PURSUANCE OF THE FOREGOING ORDER.

District Court of the United States Eastern District of New York, in Admiralty.

Whereas a libel was filed on the twenty-fourth day of August in the year of our Lord one thousand eight hundred and sixty-six, by George Place and Charles Place against the steamboat or vessel called the City of Norwich,

her engine, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned.

And whereas the said steamboat City of Norwich, &c., is in the custody of the marshal of this district, under the process issued in pursuance of the prayer of said libel.

And whereas, since the filing of said libel, certain other libels have been filed for and in behalf of certain other libellants against the said steamboat, &c., for the reasons and causes in the respective libels mentioned and set forth, and the said vessel is also in the custody of said marshal under the process issued in pursuance of the prayers of said libels respectively.

And whereas, upon the petition of "The Norwich and New York Transportation Company," as sole owners and claimants of the said steamboat, &c., an order was made and entered in this cause on the twenty-sixth day of January last past, whereby it was ordered that it be referred to Charles W. Newton, Esq., one of the commissioners of this court, upon at least two days' notice to all the proctors for the libellants who have filed libels against the said steamboat, to ascertain, appraise, and report to this court the present value of the said steamboat, her engine, tackle, &c., and that upon the coming in of the said report, the said "The Norwich and New York Transportation Company," as such owners and claimants of said steamboat, &c., have leave to give a stipulation with sufficient sureties according to the course and practice of this court on the bonding of vessels in the amount so reported, and that such stipulation be for the benefit of the libellants herein (in case they should establish the liability of the said steamboat), and of all persons and parties who might by due proceedings in this court show themselves entitled to liens upon said vessel by reason of the collision and fire mentioned in the said petition, and that upon the entering into and filing of such stipulation, the said steamboat, her engine, boiler, tackle, apparel, and furniture, should be discharged from all liability for losses and damages occasioned to all the parties for whose benefit the said stipulation should be given, and in and by which said order it was further ordered, that the said libellants and all other persons and parties having liens on the said steamboat, her engine, boiler, tackle, apparel, and furniture, for loss or damage by reason of such collision and fire, should be and they were declared to be bound by said order, as by reference to the said petition and order now on file in the office of the clerk of this court, will more fully appear.

And whereas the said commissioner, in pursuance of said order, has made his report to this court, from which it appears, that from the proofs taken by him, he did find the present value of the said steamboat City of Norwich, her tackle, &c., to be the sum of seventy thousand dollars (\$70,000), as it appears by his said report now on file in the office of the clerk of this court, which said report has been confirmed. And whereas the undersigned "The Norwich and New York Transportation Company" above named, have filed a claim to said steamboat, &c., as sole owners thereof on each of the actions already com-

menced in this court, and as such claimants and owners with their sureties, the parties thereto, have applied to the court for leave to give this stipulation and to have the same stand in place of the said steamboat, &c., to be enforced in such manner as the court may from time to time order and direct for the benefit respectively of all parties who have already filed or may hereafter file libels in this court against the said steamboat, &c., to establish or enforce any lien or claim upon or against her arising out of the said collision and fire. And the undersigned, the parties hereto, hereby consenting and agreeing, that the said claimants and owners "The Norwich and New York Transportation Company," parties hereto, in all cases in which libels may hereafter be filed in this court, against the said steamboat, &c., to enforce liens or claims upon or against the said steamboat, &c., by reason of said collision and fire, upon notice thereof to them or to J. W. C. Leveridge, Esq., their proctor, or to such other proctor as may be substituted in his stead herein, to be given by publication or otherwise as the court may direct, will, within the time limited by the court, enter an appearance in such causes, without service of process, which is hereby waived; and that in default of each appearance, such proceedings may be had and such decree made in such causes respectively as to the court may seem proper, and with the like effect as if said owners and claimants, and their sureties the parties hereto, had appeared and consented thereto, and the parties hereby further consenting and agreeing that they will, to the extent of the amount of this stipulation, abide by and perform all orders and decrees of this court made or to be made in any proceeding taken or to be taken in this court, or in any appellate court to secure the payment of any lien upon the said steamboat, her engine, machinery, and furniture, in place of which this stipulation is substituted, which may have arisen by reason of the collision and fire above referred to, and that in case of default or contumacy on the part of the said owner or claimants or their sureties, execution or executions not in all to exceed the amount of this stipulation for the value of said steamboat, to wit, seventy thousand dollars with interest thereon from this date, may issue against their goods, chattels, and lands. Now therefore the condition of this stipulation is such that if the stipulators undersigned, shall, upon the final order or decree of the said district court made and entered in the above suit, or in any suit or proceeding commenced or which may be commenced in said court to establish and enforce any lien or claim upon the said steamboat, &c., by reason of the collision and fire in the aforesaid libel and in the said petition mentioned, or upon the final decree of any appellate court, to which any or either of such suits or proceedings may be carried, and upon notice of such order or decree to the parties hereto or either of them, or to J. W. C. Leveridge, proctor for the claimants of said steamboat, &c., or to such proctor as may be substituted in his stead herein, abide by all interlocutory orders and decrees of the court, and pay the money awarded to the respective parties in and by all such final decrees rendered by this court or the appellate court (if any appeal intervene) not exceeding in the aggregate the said sum of seventy thousand dollars with interest thereon from the date

hereof, then this stipulation to be void, otherwise to remain in full force and virtue.

Taken, and acknowledged this
28th day of March, 1867,
before me,

CHARLES W. NEWTON, U. S. Commissioner.

THE NORWICH & N. Y. TRANS. CO.
By JULIUS WEBB, Genl. Manager.

JAMES L. DAY.	[L. s.]
ALBERT CLARK.	[L. s.]
E. A. PACKER.	[L. s.]
JOHN ENGLIS.	[L. s.]

Eastern District of New York, ss.

Albert Clark, James L. Day, John Englis, and Elisha A. Packer, parties to the above stipulation, being duly sworn, depose and say that he is worth the sum of _____ over and above all his just debts and liabilities, and that they each reside in the State of New York.

Sworn to, this 28th day of March, 1867,
before me,

CHARLES W. NEWTON, U. S. Commissioner.

ALBERT CLARK.
JAMES L. DAY.
JOHN ENGLIS.
E. A. PACKER.

NO. 139. — LIBEL AGAINST VESSEL BONDED, BY FREIGHTER, FOR DAMAGES SUSTAINED IN CONSEQUENCE OF COLLISION.

To the Honorable Charles L. Benedict, Judge of the District Court of the United States for the Eastern District of New York.

The amended libel of George Place and Charles Place, partners under the firm name of G. & C. Place, against the steamboat City of Norwich, her engines, boilers, tackle, apparel, and furniture, whereof "The Norwich and New York Transportation Company," a foreign corporation, organized under the laws of the State of Connecticut, are the owners and were so at the time of the collision hereinafter set forth, alleges:

First. That before and at the time of the collision hereinafter mentioned, these libellants were the owners of one locomotive driving-wheel lathe, with fixtures and appurtenances complete; two engine lathes, with fixtures and appurtenances, and six hand lathes, with fixtures complete.

The value of which was in the aggregate eight thousand dollars.

Second. Libellants further allege on information and belief, that said last mentioned machinery and tools were placed upon said steamboat City of Nor-

wich, at Norwich, in the State of Connecticut, on the seventeenth day of April, 1866, to be transported to the city of New York.

Third. Libellants further allege on information and belief, that on the evening of the seventeenth day of April, 1866, aforesaid, the said steamboat sailed from Norwich, in the State of Connecticut, for the port of New York, with the said machinery and tools on board in good order and well conditioned.

That while on her voyage, and upon Long Island Sound, about seven or eight miles north-westerly of Eaton's Neck, between half-past three and four o'clock, on the morning of April eighteenth, 1866, said steamboat came in collision, with a schooner named General S. Van Vliet, whereof William A. Wright was commander.

That in consequence of said collision, the said steamboat was set on fire and partially burned, finally sinking with all her freight on board.

That at the time of said collision, the wind was about north-east by east, a light breeze of about three or four knots.

The said schooner was beating down the sound, for New Haven, and the steamboat going up the sound bound for New York as aforesaid.

The steamboat was moving at the rate of ten or twelve knots.

That said steamboat was about twelve hundred tons burthen. The schooner was on her starboard tack, standing nearly north, and the course of the steamboat was west by south.

That the schooner had her lights properly set, and at the time of, and for a long time prior to the collision, they were burning brightly, so that they could have been seen at a great distance and in time to avoid the collision, had the officers and crew of the steamboat been diligent and careful in the management thereof.

But these libellants allege on information and belief, that said steamboat was carelessly and negligently managed by the officers and crew thereof, and that said officers and crew, or those who were on the watch were either negligent in not discovering said schooner in time to avoid such collision, or seeing said schooner and her lights, were grossly negligent in not causing said steamboat to be stopped before colliding, or causing her course to be changed.

Fourth. That these libellants have sustained damage by the loss of said machinery, tools, &c., in the sum of eight thousand dollars, which the owners of said steamboat refuse to pay.

Wherefore, libellants pray process, &c., as prayed for in the original libel, heretofore filed by the libellants against said steamboat, her engines, boilers, &c.

GEORGE PLACE.

CHARLES PLACE.

Sworn, this 29th day of January, 1867,
before me,

CHARLES W. NEWTON,
U. S. Commissioner.

No. 140. — ANSWER TO THE ABOVE LIBEL, SETTING UP COMPLIANCE WITH THE
"ACT TO LIMIT THE LIABILITY OF SHIP-OWNERS."

To the Honorable Charles L. Benedict, Judge of the District Court of the
United States within and for the Eastern District of New York.

The Norwich and New York Transportation Company, claimants of the
steamboat City of Norwich, her engines, boilers, tackle, apparel, and furniture,
intervening for their interest therein, for answer to the amended libel and com-
plaint of George Place, and Charles Place, against the said steamboat, her en-
gines, &c., allege and propound as follows :

First. These claimants admit that they are a corporation, created by or un-
der the laws of the State of Connecticut, and were the owners of the steamboat
City of Norwich, at the several times in the libel alleged, and they are still
the owners thereof. They are ignorant, and therefore deny that the libellants
were the owners of the machinery and property, or that the machinery and
property were of the value of \$8,000 as alleged in the first article of the libel.

Second. These claimants admit and say, there had been shipped, and there
were on board of the said steamboat, and which was destroyed by fire as here-
after stated, certain machinery and property of the kind stated in the first
article, but they say that the same was delivered to and received in and on
board of the said steamboat, to be thereby transported to New York under a
special contract or agreement, whereby the owners or shippers assumed and
agreed to take, and did take all risks of every kind during the course of trans-
portation, and they deny the allegations of the second article of the libel in
any wise to the contrary thereof.

Third. The claimants admit, that the steamboat with the merchandise and
property shipped on board thereof, departed from Norwich, in the State of
Connecticut, on the seventeenth day of April, 1866, and that afterwards, and
somewhere between half-past three and four o'clock, A. M. of the eighteenth
of that month, when in Long Island Sound, somewhere off or to the westward
of Stamford, in the lawful prosecution of her voyage, a collision occurred
without any fault on her part, between her and the schooner General S.
Van Vliet whereby the said steamboat was set on fire, and she and her cargo
thereby burnt and destroyed, as hereinafter more particularly stated.

They also admit that the schooner was at the time of such collision on her
starboard tack, heading nearly north, with the wind about north-east by east,
and going about three or four knots, and that the steamboat which was about
1,200 tons burthen, was heading west by south quarter south, and going ten
or eleven miles an hour, but they deny each and every other allegation as con-
tained in the third article of the libel.

Fourth. These claimants aver upon information and belief, that the schooner
was before and at the time of the collision, sailing without having a proper
and sufficient light set and burning as required by law, and that in consequence
thereof, she could not have been seen, and was not seen by those in charge of

the steamboat until they were within a very short distance from her. That the steamboat had all her lights properly set and burning, that she was under the command of a skilful pilot, and had a competent lookout properly stationed and attending to his duty, but owing to the dimness of the light of the schooner by reason of its imperfection, it was impossible to discern her at any earlier moment or in time to have avoided a collision. That as soon as she became visible, every effort was made on the part of those navigating the steamboat, which was possible, to avoid the collision, and no fault was committed on their part.

They further say that those on the schooner saw the steamboat when several miles distant, and knew that her course was crossing that upon which the schooner was sailing, and they also knew (and which was the fact), that the collision might have been avoided with perfect ease, certainty, and safety by luffing, yet they pertinaciously and wrongfully held on, and thereby carelessly, negligently, and wrongfully ran into the said steamboat, striking her on her port side, fifty feet or thereabouts abaft the stem, causing the said steamboat to take fire, which burnt and destroyed the merchandise and property in the libel mentioned, with all the other merchandise and property which was on board thereof.

Fifth. These claimants further say that the said collision and fire were not, nor was either, caused by any fault or negligence on the part of those in charge of and navigating the said steamboat. But if it should appear from the case made by the pleadings and proofs, that there was any such fault or negligence causing or tending to cause the collision and fire, still the claimants aver, that they, as owners of said steamboat, are not responsible therefor, because they say that such collision and fire were not, nor was either in any manner caused by any design or neglect, or with any privity or knowledge whatever on their part, and therefore they insist that under and by virtue of the act of Congress limiting the liability of ship-owners passed March third, 1851, they are not liable, nor is the said steamboat liable in this action to answer for or to make good the libellants' alleged loss and damage or any part thereof.

Sixth. The claimants further say, that after the aforesaid steamboat, her engines, &c. (which had been raised and brought into this district), had been arrested by the marshal of this district under the process issued out of this court for that purpose, and while the said steamboat, her tackle, &c., were in his custody, these claimants applied to this court for an order granting them leave to bond the said steamboat, her engines, &c., in the full value thereof, so as to discharge her from custody, and to relieve her from liability to further arrest, for or on account of any claims existing against her arising out of the aforesaid collision and fire; and such proceedings were thereupon had upon the said application, that an order was made and entered in this suit, on the twenty-sixth day of January, 1867, whereby it was referred to one of the commissioners of this court to ascertain, appraise, and report to this court, the value of the said steamboat, her engines, tackle, &c., and it was ordered that upon

the coming in of said report, these claimants give a stipulation with sufficient sureties, according to the course and practice of this court, on the bonding of vessels in the amount so reported, and that such stipulation should be for the benefit of the libellants herein (in case they should establish the liability of the said steamboat), and of all persons and parties who might by due proceedings in this court, show themselves entitled to liens upon the said steamboat by reason of such collision and fire, and that upon the entering into and filing of such stipulation, the said steamboat, her engines, boilers, tackle, apparel, and furniture, should be discharged from all liability for losses and damages occasioned to all the parties, for whose benefit the said stipulation should be given, and that the libellants and all other persons and parties having liens on the said steamboat, her engine, boiler, tackle, apparel, and furniture, for loss or damage by reason of such collision and fire, were thereby declared to be bound by the said order.

That such proceedings were thereupon afterwards had before the said commissioner, under the said order, that the said commissioner ascertained and reported to the said court, that the said steamboat, her engines, &c., was of the value of \$70,000, which said report was duly confirmed, and thereupon the claimants made and entered into a stipulation in the above sum with sufficient sureties, according to the course and practice of this court, as directed by the said order, which said stipulation was duly filed with the clerk of this court, and thereupon the said steamboat was discharged from custody, as by the said stipulation, order, and proceedings now remaining of record in the office of the clerk of this court, will, on reference thereto, more fully appear, and to which the claimants pray leave to refer.

These claimants further say that there was a large quantity of goods; merchandise, and other property on board of the said steamboat, at the time of the collision and fire, being transported thereby, belonging to divers persons and parties whose names are unknown to the claimants, and which, as well as the property in the libel alleged to have been on board, were burnt, consumed, and destroyed by the aforesaid collision and fire; that such goods, merchandise, and property greatly exceeded in value and amount the value of said steamboat, her engines, &c., and of her freight pending at the time of the said collision; that each of the said freighters and owners of the said cargo stands upon the same footing, as the claimants believe, as the libellants in this action, and that if it shall appear that the libellants have a valid lien or claim upon the said steamboat, her engines, &c., to satisfy their demand in the libel mentioned (which is not admitted), then such other parties have a like lien or claim upon the said steamboat, and the aforesaid stipulation is and will be held for their benefit, as well as for the benefit of the libellants herein. The claimants therefore insist that the other freighters and claimants should be made parties to this action, or the libel herein should be so framed as that it shall be on behalf of the libellants and such other parties as may lawfully intervene for their interest in the said stipulation, to the end that there may be but one litigation

arising out of the same calamity, and that these claimants and all other persons interested, may be protected in their rights by the decree of this court to be made herein.

Seventh. These claimants further say that inasmuch as the whole value of the steamboat, her engines, &c., and of her freight pending at the time of the said collision and fire, is not, as above alleged, sufficient to make compensation in full to each of the several freighters and owners of the goods, merchandise, and property on board, that the libellants and the other freighters and owners, if entitled to recover any portion of their said claim or loss, are only entitled, under the act of Congress and the order above referred to, to recover and receive compensation out of the value of the said steamboat and freight pending, in proportion to their respective losses, and that the libellants are not entitled under any circumstances to recover any more, nor are the claimants in any way liable for any greater sum in this suit than such just proportion.

That all and singular the matters herein contained are true, in verification whereof, if denied, the claimants crave leave to refer to the depositions and proofs to be taken and exhibited herein.

Wherefore the claimants pray that this Honorable Court will be pleased to pronounce against the libel herein, and that the same may be dismissed with costs to these claimants to be taxed.

THE NORWICH & N. Y. TRANS. CO.

By JULIUS WEBB,
General Manager and Agent.

J. W. C. LEVERIDGE,

Proctor for Claimants & Respondents.

E. H. OWEN, Advocate.

No. 141. — VERIFICATION BY AGENT OF CORPORATION, ITS OFFICERS BEING
ABSENT FROM THE DISTRICT.

Southern District of New York, ss.

Julius Webb being duly sworn, says that he is the general manager and agent of the "Norwich and New York Transportation Company," the above-named claimants. That the said company is a foreign corporation, incorporated by or under the laws of the State of Connecticut, and their principal place of business is in the city of Norwich, in the said State, and the officers of the said company are now absent from this State and from the Eastern District of New York. That deponent has heard the above answer read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters deponent believes it to be true.

JULIUS WEBB.

Sworn, this 9th day of April, 1857,
before me,

JOHN A. OSBORN, U. S. Commissioner.

No. 142. — ORDER FOR WARRANT OF ARREST. — (*Vide ante*, page 243.)

No. 143. — MARKING OF PROCESS FOR BAIL. — (*Vide ante*, page 243.)

No. 144. — LIBELLANT'S STIPULATION FOR COSTS IN REM. — (*Vide ante*, page 498.)

No. 145. — LIBELLANT'S STIPULATION FOR COSTS IN PERSONAM. — (*Vide ante*, page 242.)

Mesne process.

No. 146. — WARRANT OF ARREST IN PERSONAM.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Marshal of the Southern District of New York, Greeting:

Whereas, a libel has been filed in the District Court of the United States of America for the Southern District of New York, on the day of in the year of our Lord one thousand eight hundred and by A. B. against

[L. S.] C. D., in a certain action, civil and maritime, for freight, therein alleged to be due to the said libellant, amounting to two hundred and fifty-two dollars, and praying that a warrant of arrest may issue against the said defendant. Now, therefore, we do hereby empower, and strictly charge and command you the said marshal, that you take and arrest the said defendant, if he shall be found in your district, and him safely keep, so that you may have his body before the said District Court, on the day of at the City Hall, in the city of New York, then and there to answer the said libel, and to make his allegations in that behalf: and have you then and there this writ, with your return thereon.

Witness the Honorable Samuel R. Betts, Judge of said court, this day of in the year of our Lord one thousand eight hundred and and of our independence the

E. F., Clerk.

G. H., Proctor.

No. 147. — MARK FOR BAIL.

The marshal will hold the respondent to bail in the sum of hundred and dollars.

Dated

18

Clerk.

No. 148. — MARSHAL'S DEPUTATION TO HIS DEPUTY OR BAILIFF.

I hereby depute
Dated

18

to execute the within process.

U. S. Marshal.

No. 149. — MARSHAL'S RETURN.

Defendant taken.

Marshal.

No. 150. — THE LIKE, WITH ATTACHMENT AGAINST GOODS AND CHATTELS, AND CREDITS AND EFFECTS, AND SUMMONS TO GARNISHEE.

[L. S.]

The President of the United States of America to the Marshal of the Southern District of New York, Greeting: Whereas a libel has been filed in the District Court of the United States of America, for the Southern District of New York, on the nineteenth day of May, in the year of our Lord one thousand eight hundred and forty eight, by Thomas Gould, libellant, against John Gibbons, master of the ship Mount Vernon, in a certain action, civil and maritime, for certain assaults and batteries therein alleged to have been committed on the said libellant, to his damage of five hundred dollars, and praying that a warrant of arrest may issue against the said defendant, and that he may be held to bail, pursuant to the rules and practice of this court. Now, therefore, we do hereby empower, and strictly charge and command you, the said marshal, that you take and arrest the said defendant, if he shall be found in your district, and him safely keep, so that you may have his body before the said District Court on the twenty-third day of May inst., at the City Hall in the City of New York, then and there to answer the said libel, and to make his allegations in that behalf; and if the said defendant cannot be found in your district, that you attach his goods and chattels in your district to the amount sued for, and if no goods and chattels can be found, that you attach his credits and effects to the amount sued for, in the hands of the garnishees John Elwell & Co., and St. George Givins, and that you summon the said garnishees, to appear before the said District Court on the said twenty-third day of May instant, to do and abide what may be required of them in this behalf; and have you then and there this writ, with your return thereon.

Witness the Honorable Samuel R. Betts, Judge of said court, this nineteenth day of May, in the year of our Lord one thousand eight hundred and forty-eight, and of our independence the seventy-second.

J. W. METCALF, Clerk.

A. NASH, Proctor.

No. 151. — MARSHAL'S RETURN.

The defendant is not found in the District, and I have attached the following goods and chattels of said defendant.

OR :

The credits and effects of the said defendant, in the hands of John Elwell & Co., and St. George Givins, garnishees, and have summoned the said garnishees as within commanded.

HENRY F. TALLMADGE, Marshal.

No. 152. — CITATION AND MONITION IN PERSONAM, WITH MARSHAL'S RETURN.

The President of] the United States of America, to the
 Marshal of the Southern District of New York, Greeting:
 Whereas a libel has been filed in the District Court of the
 [L. S.] United States of America for the Southern District of New
 York, on the day of in the year of
 our Lord one thousand eight hundred and by

A. B., against C. D., in a certain action, civil and maritime,
 for wages therein alleged to be due to the said libellant, amounting to seventy-
 five dollars, and praying that a citation may issue against the said defendant,
 pursuant to the rules and practice of this court.

Now, therefore, we do hereby empower, and strictly charge and command
 you, the said marshal, that you cite and admonish
 the said defendant, if he shall be found in your district, that he be and appear
 before the said district court, on the day of
 at the City Hall in the city of New York, then and there to answer the said libel,
 and to make his allegations in that behalf; and have you then and there this
 writ, with your return thereon.

Witness the Honorable Samuel R. Betts, Judge of said court, this
 day of in the year of our Lord one thousand eight hundred
 and and of our independence the

J. W. M., Clerk.

E. F., Proctor.

No. 153. — RETURN OF MARSHAL.

Personally served.

H. F. T., Marshal.

No. 154. — WARRANT OF ARREST OR ATTACHMENT AGAINST A SHIP, WITH A
 MONITION AND A WARRANT OF ARREST AGAINST THE MASTER OR OWNER.

Southern District of New York, ss.

The President of the United States of America, to the Mar-
 shal of the Southern District of New York, Greeting: Whereas

[L. S.] a libel *in rem* and *personam* hath been filed in the District Court of the United States for the Southern District of New York, on the _____ day of _____ in the year of our Lord one thousand eight hundred and forty _____ by A. B., against the ship or vessel called the Rover, her tackle, &c. (or other property, describing it, as the case may be), for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded, to attach the said ship or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the Southern District of New York, on the _____ day of _____ at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf.

[We do hereby further empower, and strictly charge and command you the said marshal, that you arrest the said owner or master, if he shall be found in your district, and have his body before the said District Court, on the day of _____ at the City Hall in the city of New York, then and there to answer the said libel, and to make his allegations in that behalf]; and have you then and there this writ, with your return thereon.

Witness the Honorable Samuel R. Betts, Judge of said court, this day of _____ in the year of our Lord one thousand eight hundred and _____ and of our independence the _____

J. W. M., Clerk.

E. F., Proctor.

[If the process be *in rem* only, the form is the same, omitting the last clause in brackets.]

No. 155. — RETURN OF THE MARSHAL.

As within commanded, I attached the _____ therein described, on the _____ day of _____ and have given due notice to all persons claiming the same, that this court will on the _____ day of _____ inst., if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter, proceed to the trial and condemnation

thereof, should no claim be interposed for the same [and I have arrested the defendant within named].

U. S. Marshal.

[If the process be in rem only, the return is the same, omitting the clause in brackets.]

NO. 156.—THE LIKE, AGAINST A SHIP AND OWNER AND THE EXECUTOR OF ANOTHER OWNER.

Southern District of New York, ss.

The President of the United States of America, To the Marshal of the Southern District of New York, Greeting: Whereas, a libel hath been filed in the District Court of the United States, for the Southern District of New York, on the twenty-third day of November, in the year of our Lord one thousand eight hundred and forty-one, by Robert Gordon, against the ship Hilah, her tackle, apparel, and furniture, and against Edmund Hammond, master and owner, and against Thomas E. Lyde, executor of the last will and testament of Abraham Tanner, owner, deceased, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship Hilah, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had, that the said ship Hilah, her tackle, &c., may for the causes in the said libel mentioned, be condemned and sold to pay the demand of the libellant. You are therefore hereby commanded to attach the said ship Hilah, her tackle, &c., and to detain the same in your custody until the further orders of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the Southern District of New York, on the Fourteenth day of December next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And you are hereby further empowered and commanded to cite and admonish the said Edmund Hammond and Thomas E. Lyde, executor of Abraham Tanner, owner of said vessel, lately deceased, if they shall be found in your district, that they appear before the said court, on the day herein above last mentioned, to answer the matters contained in the said libel, and to stand to and abide such order and decree as may be made by the court in the premises; and that you cite the said Edmund Hammond, master and owner, and Thomas E. Lyde, executor of the last will and testament of Abraham Tanner, owner, deceased, and all other persons having any interest in the said ship Hilah, her tackle, apparel, &c.,

that they be and appear before the said court, on the said fourteenth day of December, next, then and there to interpose their claims for the same, and to make their allegations in this behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Honorable Samuel R. Betts, Judge of the said court, this twenty-third day of November, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the United States the sixty-sixth.

CHAS. D. BETTS, Clerk.

S. B., Proctor.

No. 157. — THE LIKE, IN A CAUSE OF POSSESSION OR RESTITUTION.

Southern District of New York, ss.

The President of the United States of America, To the Marshal of the Southern District of New York, Greeting :
 Whereas, a libel *in rem* and *personam* hath been filed in
 [L. S.] the District Court of the United States, for the Southern District of New York, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and forty-seven, by Alfred Peabody, libellant, against the schooner Lucinda Snow, her tackle, &c., and against Stubbs Rogers, in an action, civil and maritime, for said vessel and her freight, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said schooner or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had that the said schooner or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be delivered to the libellant.

You are therefore hereby commanded, to attach the said schooner or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be delivered to the libellant, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the Southern District of New York, on the first Tuesday of September next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And the libellant having prayed that the said Stubbs and Rogers may be cited to appear before the said court, we do hereby further empower, and strictly charge and command you the said marshal, that you cite and admonish the said Stubbs and Rogers, if they shall be found in your district, that they and each of them appear before the said district court, on the seventh day of September next, at the City Hall, in the city of New York, then and there to

Witness the Honorable Samuel R. Betts, Judge of said court, this nineteenth day of August, in the year of our Lord one thousand eight hundred and forty-seven, and of our independence the sixty-sixth.

MARTIN STRONG AND A. F. SMITH,
Proctors.

U. S. Marshal.

You are therefore hereby commanded to attach the said barque or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to attach said freight, and to give due

notice to all persons claiming the said vessel and freight, or knowing or having any thing to say why the same should not be condemned pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the Southern District of New York, on the day of

at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf; and we do hereby further empower, and strictly charge and command you the said marshal, that you cite the said Crosby, master of said vessel, if he shall be found in your district, to be and appear before the said District Court, on the day of at the City Hall in the city of New York, then and there to answer the said libel, and to make his allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness the Honorable Samuel R. Betts, Judge of said court, this day of in the year of our Lord one thousand eight hundred and and of our independence the

A. B., Clerk.

C. D., Proctor.

No. 160. — ATTACHMENT TO COMPEL OBEDIENCE TO AN ORDER OR DECREE.

The President of the United States to the Marshal of the Southern District of New York, Greeting:

Whereas in a certain cause, civil and maritime, in the District Court of the United States for the Southern District of New York, where A. B. is libellant against C. D. [or the ship or vessel, &c.], the said court did, on the

day of 1850, by a decree made on that day, order and direct that [set forth the order]; and whereas the said neglected and refused to obey said decretal order, and thereupon the said court ordered and decreed that an attachment should issue against him to compel him to perform and obey the said decretal order. You are therefore commanded to attach and arrest the said and him safely keep until he obey and perform the said decretal order, and [here specify the particular acts to be done], and to return to the said court what you shall do in the premises, with this writ.

Witness [teste as in other process].

Proctor.

Clerk.

No. 161. — MARSHAL'S RETURN.

I have attached and arrested the within named and have him now in my custody.

HENRY F. TALLMADGE, Marshal.

Stipulations.

No. 162.—LIBELLANT'S STIPULATION FOR COSTS AND EXPENSES.

District Court of the United States for the Southern District of New York.

STIPULATION ENTERED INTO PURSUANT TO THE RULES AND PRACTICE OF THIS COURT.

Whereas a libel was filed in this court, on the day of
 in the year of our Lord one thousand eight hundred and by
 A. B., against for the reasons and causes in the said libel
 mentioned, and the said A. B., and C. D. and E. F., his sureties, the parties
 hereto hereby consenting, that in case of default or contumacy on the part of
 the libellant or his sureties, execution for the sum of \$100 (or \$250) may issue
 against their goods, chattels, and lands.

Now therefore, it is hereby stipulated and agreed, for the benefit of whom
 it may concern, that the stipulators undersigned are, and each of them is,
 hereby bound, in the sum of \$100 (or \$250), conditioned that the libellant
 above named shall pay all costs and expenses which shall be awarded against
 him by the final decree of this court, or upon an appeal, by the appellate
 court.

Taken and acknowledged, this day }
 of 184 , before me, }

A. B.
 C. D.
 E. F.

Southern District of New York, ss.

 party to the above stipulation, being
 duly sworn, deposes and says that he is worth the sum of two (or five) hun-
 dred dollars over and above all his just debts and liabilities.

Sworn this day }
 of 185 , before me, }

No. 163. — DEFENDANT'S STIPULATION FOR COSTS AND EXPENSES.

District Court of the United States, for the Southern District of New York.

STIPULATION ENTERED INTO PURSUANT TO THE RULES AND PRACTICE OF THIS COURT.

Whereas a libel was filed in this court, on the day of
 in the year of our Lord one thousand eight hundred and
 by A. B. against C. D., for the reasons and causes in the said libel mentioned;
 and whereas the said C. D. has appeared in said suit, and the said C. D. and
 E. F., his surety, the parties hereto hereby consenting and agreeing, that, in
 case of default or contumacy on the part of the defendant or his sureties, exe-

cution may issue against their goods, chattels, and lands, for the sum of
hundred dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom
it may concern, that the stipulators undersigned shall be, and are bound in
the sum of hundred dollars, conditioned that the de-
fendant above named shall pay all costs and expenses which shall be awarded
against him in the suit upon the final adjudication thereof, or by any interloc-
utory order in the process of this suit.

Taken and acknowledged, this day }
of 185 , before me,

Southern District of New York, ss.

party to the above stipulation, being duly sworn, deposes
and says that he is worth the sum of dollars, over and above all his
just debts and liabilities.

Sworn this day of 185 ,
before me.

NO. 164. — CLAIMANT'S STIPULATION FOR COSTS AND EXPENSES.

District Court of the United States for the Southern District of New York.

STIPULATION ENTERED INTO PURSUANT TO THE RULES AND PRACTICE OF THIS
COURT.

Whereas a libel was filed in this court, on the day of
in the year of our Lord one thousand eight hundred
and by A. B. against for the reasons and
causes in the said libel mentioned, and whereas a claim has been filed in the
said cause by C. D., and the said C. D. and E. F., his surety, the parties
hereto hereby consenting, that, in case of default or contumacy on the part
of the claimant or his sureties, execution for the sum of \$250 may issue
against their goods, chattels, and lands.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom
it may concern, that the stipulators undersigned are, and each of them is,
hereby bound, in the sum of \$250, conditioned that the claimant above
named, shall pay all costs and expenses which shall be awarded against
him by the final decree of this court, or upon an appeal, by the appellate
court.

A. B.
C. D.
E. F.

Taken and acknowledged, this day }
of 185 , before me,

party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

day {

District Court of the United States for the Southern District of New York.

Whereas a libel was filed in this court, on the _____ day
of _____ in the year of our Lord one thousand eight hundred and _____
by A. B. against _____ for the reasons and causes
in the said libel mentioned, and whereas C. D. has intervened for his interest,
and the said C. D. and E. F., his surety, the parties hereto hereby consenting
and agreeing, that, in case of default or contumacy on the part of the said in-
tervenor or his sureties, execution may issue against their goods, chattels, and
lands, for the sum of \$250.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned are, and each of them is bound, in the sum of \$250, conditioned that the intervenor above named shall abide by the final decree rendered in the cause, and shall pay all such costs, expenses, and damages, as shall be awarded against him by the final decree of this court, or of the appellate court.

A. B.
C. D.
E. F.

day }

party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

day }

**No. 166. — DEFENDANT'S STIPULATION TO APPEAR AND PAY THE DECREE —
GIVEN ON ARREST OR APPEARANCE.**

District Court of the United States for the Southern District of New York.

STIPULATION ENTERED INTO PURSUANT TO THE RULES AND PRACTICE OF THIS COURT.

Whereas a libel was filed in this court, on the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ by A. B. against C. D., for the reasons and causes in the said libel mentioned, and the said C. D. and E. F. and G. H., his sureties, the parties hereto hereby consenting and agreeing, that, in case of default or contumacy on the part of the said defendant or his sureties, execution may issue against their goods, chattels, and lands, for the sum of _____ dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned are, and each of them is, bound in the sum of _____ dollars, conditioned that the defendant above named, shall appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money, expenses, and damages, awarded by the final decree rendered therein in this court, or in any appellate court.

A. B.

C. D.

E. F.

Taken and acknowledged, this _____ day }
of _____ 185 , before me,

Southern District of New York, ss.

_____ parties to the above stipulation, being duly sworn, depose and say each for himself, that he is worth the sum of _____ hundred dollars, over and above all his just debts and liabilities.

Sworn this _____ day }
of _____ 185 , before me,

No. 167. — CLAIMANT'S STIPULATION TO ABIDE BY AND PAY THE DECREE.

District Court of the United States for the Southern District of New York.

STIPULATION ENTERED INTO PURSUANT TO THE RULES AND PRACTICE OF THIS COURT.

Whereas a libel was filed in this court, on the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ by A. B. against _____ for the reasons and causes in the said libel mentioned, and a claim has been filed by C. D., and the said claimant, and E. F. and G. H., his sureties, the parties hereto hereby consenting and agreeing, that, in case of

Now, therefore, it is hereby stipulated, for the benefit of whom it may concern, that the stipulators undersigned, and each of them, is bound in the sum of dollars, conditioned that they shall at any time, upon the interlocutory and final order or decree of the said District Court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree, to said claimant, or Esquire, his proctor, pay into court the full value aforesaid, and abide by, and pay the money awarded

by the final decree rendered by this court or the appellate court, if any appeal intervene.

Taken and acknowledged, this day }
of 185 , before me, }

U. S. Commissioner.

Southern District of New York, ss.

party to the above stipulation, being
duly sworn, deposes and says that he is worth the sum of dollars,
over and above all his just debts and liabilities.

to, this day }
185 , before me, }

U. S. Commissioner.

NO. 169. — PENAL BOND TO THE MARSHAL ON ARREST OF THE PERSON.

Know all men by these presents, that we, C. D., E. F., and G. H., are held and firmly bound unto Henry F. Tallmadge, Marshal of the Southern District of New York, in the sum of dollars, lawful money of the United States of America, to be paid to the said Henry F. Tallmadge, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this day of in the year of our Lord one thousand eight hundred and

Whereas, a libel has been filed in the District Court of the United States for the Southern District of New York, on the day of 185 , by A. B. against the above bounden C. D., in a certain action, civil and maritime, for wages, therein alleged to be due and owing to the said libellant amounting to twenty-seven dollars.

The condition of this obligation is such, that if the above bounden C. D. shall appear in the said suit, before the said District Court of the United States for the Southern District of New York, on the day of at the City Hall, in the city of New York, and abide by all orders of the court, interlocutory or final in, the cause, and pay the money awarded by the final decree rendered therein, in the said court, or in any appellate court, then the above obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered in }
the presence of }

No. 170. — JUSTIFICATION OF BAIL.

Southern District of New York, ss.

being duly sworn, says, that he resides at No. _____ and that he is worth the sum of _____ over and above all his just debts and liabilities.

Sworn before me this, _____ }
day of _____ 185 _____ }

No. 171. — BOND UNDER THE ACT OF 1847.

Know all men by these presents, that we, C. D., E. F., and G. H., are held and firmly bound unto (*the libellant*) in the sum of (*double the amount claimed in the libel*) dollars lawful money of the United States of America, to be paid to the said _____ his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this _____ day in the year of our Lord one thousand eight hundred and _____

Whereas, a libel has been filed in the District Court of the United States for the Southern District of New York, on the _____ day of _____ 185 , by _____ against the ship or vessel, _____ in a certain action, &c., civil and maritime, for _____ therein alleged to be due, and owing to the said libellant, amounting to (*the amount claimed in the libel*).

The condition of this obligation is such, that if the above bounden shall abide and answer the decree of the court in such cause, then the above obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered }
in the presence of }

No. 172. — JUSTIFICATION.

Southern District of New York, ss.

being duly sworn, says, that he resides at No. _____ and that he is worth the sum of _____ over and above all his just debts and liabilities.

Sworn before me, this _____ day of _____ 185 _____

No. 173. — CERTIFICATE OF APPROVAL BY THE JUDGE, OR THE COLLECTOR OF THE PORT.

I hereby approve of the sureties in the within bond.

Dated, &c.

(Signed by the Judge or the Collector.)

No. 174. — STIPULATION FOR THE SAFE RETURN OF A VESSEL IN A SUIT BY
A PART OWNER.

District Court of the United States for the Southern District of New York.

filed the day of 185

STIPULATION FOR LIBELLANT'S COSTS ENTERED INTO PURSUANT TO THE RULES OF
PRACTICE OF THIS COURT.

Whereas, a libel was filed in this court, on the day of in
the year of our Lord one thousand eight hundred and fifty by A. B.,
owner of of the ship or vessel called the her tackle, &c.,
against the said ship or vessel, her tackle, &c., for the reasons and causes in
the said libel mentioned, which said vessel, her tackle, &c., is of the value of
 dollars, as appears by the consent (*or appraisement*) on file
in said cause, and C. D., and E. F., the other owners of said vessel, and G. H.
and I. J. their sureties, parties hereto, hereby consenting and agreeing, that in
case of default on the part of the libellant or his sureties, execution may issue
against their goods, chattels, and lands, for the sum of dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it
may concern, that the stipulators undersigned are, and each of them is bound,
in the sum of (*double the value of libellant's share*) dollars, conditioned
that the said vessel shall safely return from her present intended voyage, to the
port of New York.

Taken and acknowledged, this day }
of 185 , before me, }

U. S. Commissioner.

Southern District of New York, ss.

 parties to the above stipulation, being duly sworn,
depose and say each for himself that he is worth the sum of
hundred dollars over and above all his just debts and liabilities.

of to, this day }
 185 , before me, }

U. S. Commissioner.

No. 175. — CONSENT TO STIPULATE FOR PROPERTY WITHOUT PROCESS.

District Court of the United States for the Southern District of New York.

JOHN JONES,
vs.
THE STEAMER EUREKA, HER ENGINE,
TACKLE, &c. }

A libel having been filed in this cause, I hereby consent that no process issue
thereon to arrest the said vessel, provided that, in the course of this day, A.
B., the owner thereof, file a claim, and with C. D., as surety, enter into the

usual stipulations for costs and value, the latter in the sum of dollars, in the same manner as if the said vessel were arrested, and were to be discharged on stipulation. Publication to be waived and answer to be filed on otherwise default to be entered.

Dec. 4, 1849.

E. F., Proctor for Libellant.

No. 176. — THE LIKE, IN A DIFFERENT FORM.

(Title of the cause.)

A libel having been filed in this cause, and A. B., the owner of said vessel, having, without process, filed his claim to the same, and with C. D., as surety, having entered into the usual stipulations, it is agreed that the said cause shall, in all things, proceed as if the said vessel had been arrested and regularly discharged on stipulation.

Dec. 4, 1849.

E. F., Proctor for Libellant.

G. H., Proctor for Claimant.

No. 177. — CONSENT THAT A VESSEL BE DISCHARGED ON STIPULATION.

(Title of the cause.)

The ship Wallace having been arrested on the process issued in this cause, we consent that, on filing the usual stipulation to be entered into according to the rules of the court to appear, abide, and perform the decree in the sum of dollars, and on filing a claim, and on complying with the rules of the court as to the fees of the officers of court, the said ship be discharged from custody and arrest.

Dec. 5, 1849.

G. H., Proctor for Libellants.

No. 178. — CONSENT TO FIXING THE VALUE WITHOUT APPRAISEMENT, AND DISCHARGING THE PROPERTY FROM CUSTODY.

(Title of the cause.)

I hereby consent that the value of the brig Rover, her tackle, apparel, and furniture, be fixed at six thousand dollars, without appraisement, and that, on filing a claim and the necessary stipulations for costs and value, &c., complying with the rules of the court as to fees, the said brig be discharged from custody. .

G. H., Proctor for Libellant.

No. 179. — CLAIM TO A PORTION OF THE CARGO.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The claim of David Jones, of the city of New York, merchant, to nine cases of merchandise marked D. J., 1 to 9, a portion of the cargo of the brig Roarer, now in custody of the marshal of this district at the suit of John Livingston and others, alleges as follows:

That he is the true and *bond fide* owner of said nine cases of merchandise, and that no other person is the owner thereof.

And thereupon the said claimant prays that this Honorable Court will be pleased to decree a restitution of the same to him, and otherwise right and justice to administer in the premises.

DAVID JONES.

Sworn May 5th, 1843,
before me,

GEO. W. MORTON, U. S. Commissioner.

A. B., Proctor and Advocate.

No. 180. — CLAIM TO A VESSEL. — (*Vide ante*, page 276.)

No. 181. — A CLAIM BY THE UNITED STATES ON THE GROUND OF FORFEITURE.
— (*Vide ante*, No. 18, page 506.)

No. 182. — AN ANSWER. — (*Ante*, page 281.)

No. 183. — A CLAIM AND ANSWER — (*Ante*, No. 9, page 501; No. 12, page 505; No. 59, page 584; No. 61, page 585; No. 63, page 587; No. 65, page 588.)

No. 184. — A CLAIM, ANSWER, AND EXCEPTION TO THE JURISDICTION.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States, for the Southern District of New York.

The claim, answer, and exceptions of Herman Schultze of said district, master of the schooner Oscar Jones, intervening for his interest in the said schooner, her tackle, apparel, and furniture, to the libel of — Cammerden, alleges as follows:

First. That the said Schultze as master, claims the said schooner, her tackle, apparel, and furniture, and further alleges and answers as follows:

Second. That he is entirely ignorant of the matters alleged in the first and second articles of said libel contained.

Third. That at the time the said vessel was seized by reason of the libel of

the said Cammerden, he had and still has an interest in the said vessel, to the amount of five hundred and sixty dollars and forty-nine cents, inasmuch as he had served on board the said schooner, as mate from the day of one thousand eight hundred and forty to the day of one thousand eight hundred and forty at the wages of dollars per month, amounting in the whole to the sum of one thousand and forty-two dollars and cents, which has never been paid to him, and is still due. And also for certain moneys advanced by this claimant to pay the wages of the crew of the said schooner, and other necessary advances during the voyage now broken up by the process of this court, amounting to the sum of four hundred and seventeen dollars and eighty-five cents, which wages and advances were a lien on said schooner, and this defendant having advanced the same is subrogated to the rights of said seamen, and he has filed his libel in this Honorable Court to enforce his said lien.

Fourth. That this Honorable Court has no jurisdiction of the matters contained in the said libel, the same not being matters of admiralty and maritime jurisdiction, the said libel being filed in this court to enforce a certain decree or judgment rendered by a state court of the city of New Orleans in Louisiana, in a suit on promissory notes in a personal action at law, and not by any court of admiralty, nor in a cause within the admiralty and maritime jurisdiction, nor on or for any cause, civil and maritime; and this claimant and respondent prays the same advantage thereof as if the same were separately, and formally pleaded to said libel.

Fifth. That the privilege and preference on the said schooner granted in the aforesaid decree, if any such exist or was granted, was so granted without said schooner being attached or in the possession or custody of said court, and while the said schooner was absent at sea in foreign waters, ports, and places, and the same could not and did not affect said schooner or any person except her owner, nor could it have any affect to give the plaintiff therein any preference over other persons, nor be enforced except within the jurisdiction of said court which rendered the same and by the process thereof.

Sixth. That if the said claim of the said libellant be a lien on said vessel, the same is to be deferred to the claims of this claimant, which are for services rendered to said vessel in navigating and preserving her and bringing her safely to the United States, and the lien by hypothecation, decree, or otherwise, in said promissory notes was subject to the payment of such wages and advances, and his said wages as mate were a lien prior in point of time to the said promissory notes and the decree thereon.

HERMAN SHULTZE.

Sworn to before me this day of

May 1849.

GEORGE W MORTON, U. S. Commissioner.

C. L. BENEDICT, Proctor.

E. C. BENEDICT, Advocate.

Fourth Interrogatory. — Did he not leave in your hands, on a previous voyage, a sum of money as security to you, for your liability for him as bail, and is not the same still in your hands?

Fifth Interrogatory. — Did he not leave in your hands this present voyage, his chronometer, and other nautical instruments for safe keeping, while he remained in port, and were they not, or some of the same, in your possession at the time of the service of the process in this cause upon you?

Sixth Interrogatory. — Have you not in your possession, or under your control, some other property, goods, chattels, or funds, belonging to the said John Given? State fully and particularly.

Seventh Interrogatory. — Have you not in your hands, or under your control, some notes, drafts, or other bills receivable, or debts, or choses in action, or credits, belonging to said John Given, or in which he is interested? State fully and particularly.

Eighth Interrogatory. — Is not the said Given part owner of some vessel, and have you not in your hands, funds or property belonging to the owners of said vessel? State fully and particularly.

A. NASH,

Proctor for Libellant.

NO. 188. — ANSWERS BY A GARNISHEE TO INTERROGATORIES PROPOUNDED TO HIM.

Answers of James W. Elwell, garnishee, to the interrogatories of Thomas Gould.

To the First Interrogatory. — My name is James W. Elwell; I reside in New York, and am a merchant.

To the Second Interrogatory. — I have known the defendant two years, during which time he has been a shipmaster.

And so on, answering fully and truly to each Interrogatory.

JAMES W. ELWELL.

Sworn, June 10th, 1848,
before me,

GEORGE W. MORTON, Commissioner.

NO. 189. — AMENDMENTS.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

Amendments to the libel of William Bonell, against the ship Henry Clay, her tackle, apparel, and furniture, and against Henry Schrever, late master, in a cause of wages, civil and maritime.

First. Insert, after the word "October," in the fifth article, the words fol-

lowing — “and before the expiration of the voyage contracted for by your libellant.”

Second. Add at the conclusion of the fifth article, the words following — “and when the said ship Henry Clay having performed her above mentioned intended voyage, arrived in safety on the day of February last.”

Third. Insert, after the word “vessel,” in the sixth article, the words following — “and the said master, wages during the voyage aforesaid, and until the arrival of the said ship in New York,” And

Fourth. Strike out the words “seventy-four,” in the sixth article, and insert in lieu thereof “ninety-three.”

*Sign and verify like the {
original pleading.*

BURR & BENEDICT, Proctors.
BURR, Advocate.

No. 190. — A SUPPLEMENTAL AND AMENDATORY LIBEL.

To the Honorable Samuel R. Betts, &c.

The supplemental and amendatory libel of A. B. against the brig Lowell, her tackle, &c., and against all persons intervening, &c., and against E. F., master, alleges as follows:

First, &c. — (*Allege the facts as amended, in articles, and add prayer as amended, in same form as original libel.*)

(*Sign and verify like original libel.*)

Orders Ex Parte.

No. 191. — THE ORDER OF THE JUDGE FOR BAIL, TO BE ENDORSED ON THE LIBEL.

Title of the Cause.

On filing the within libel, and otherwise complying with the rules of the court, let a warrant of arrest issue in this cause against the defendant, and let him be held to bail in five hundred dollars.

SAM'L R. BETTS, Judge.

Dec. 18, 1849.

No. 192. — ORDER STAYING PROCEEDINGS, TO GIVE TIME TO MAKE A MOTION.

Title of the Cause.

On the foregoing affidavit and notice of motion, let all proceedings in this cause, on the part of the libellant, be stayed for a sufficient time to make said motion, and have the order of the court thereon.

SAM'L R. BETTS, Judge.

June 5, 1849

No. 193. — ORDER ENLARGING TIME.

Title of the Cause.

Let the time to answer the libel — (*to reply — to answer the interrogatories — to except to the libel, or answer, or interrogatories*) — be extended days.

SAM'L R. BETTS, Judge.

June 8, 1849.

No. 194. — THE CAPTION OF ORDERS AND DECREES.

At a stated (or special) term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Tuesday, the third day of January, in the year of our Lord one thousand eight hundred and forty-three.

Present — The Honorable Samuel R. Betts, District Judge.

A. B.,	}
<i>vs.</i>	
C. D.	

No. 195. — ORDER OF CONDEMNATION BY DEFAULT AND REFERENCE TO A COMMISSIONER.

The marshal having returned, on the monition issued in the above entitled cause, that he had attached the said vessel, her tackle, apparel, and furniture, and had given due notice to all persons claiming the same, that the court would, on this day, proceed to the trial and condemnation of the said vessel, her tackle, &c., should no claim be interposed for the same: whereupon, on motion of

Esquire, proctor for the libellants, proclamation was made for all persons interested in the said vessel, her tackle, &c., to appear and interpose their claims; and no person appearing, on like motion it was further ordered, that the defaults of all persons be and the same are accordingly hereby entered, and that the said vessel, her tackle, &c., be condemned to pay the demands of the libellant.

And it is further ordered, that it be referred to a commissioner of this court to ascertain and compute the amount due the libellant, for freight (*or other cause*), and to report the same to this court, with all convenient speed.

No. 196. — DECREE FOR THE LIBELLANT ON HEARING, WITH REFERENCE TO COMPUTE.

This cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered, adjudged, and decreed, that the libellant recover the amount of his wages [or freight, or materials, &c.,] in this cause:

and it is further ordered, that it be referred to a commissioner to ascertain and compute the amount due to the libellant in the premises, and that he report the same to this court, with all convenient speed.

No. 197. — THE LIKE IN A CAUSE OF DAMAGE, WITH REFERENCE TO TAKE AND REPORT THE TESTIMONY ON THE AMOUNT OF DAMAGE.

This cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered, adjudged, and decreed, that the libellant recover his damages for the assault and battery [or collision, or other cause,] mentioned in the libel, and that it be referred to a commissioner to take the testimony of the amount of such damages, and to report the same to this court with all convenient speed.

No. 198. — ORDER OF CONFIRMATION OF THE REPORT OF A COMMISSIONER, AND FINAL DECREE, WITH JUDGMENT AGAINST THE BAIL.

The time for filing exceptions to the commissioner's report having expired, and no exceptions having been filed, on reading and filing the report of George W. Morton, United States Commissioner, to whom the above matter was referred, by which there is reported due the libellant for the wages [or freight, or other cause,] demanded in the libel, the sum of _____ dollars: On motion of _____ proctor for the libellant, it is ordered that the report be in all things confirmed, and that the defendant pay to the libellant in this action the amount so reported due to him, together with his costs to be taxed.

And on like motion, it is further ordered, that a summary judgment be, and the same is hereby entered against the said A. B., the principal, and C. D., the surety, for the sum of _____ dollars, the amount of the bond and stipulation given to the marshal, on bonding; and that the libellant have execution thereon to satisfy this decree.

No. 199. — FINAL DECREE FOR A SUM CERTAIN, WITH COSTS.

This case having been heard on the pleadings and proofs, and having been argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed, by the court, that the defendant pay to the libellant the sum of two hundred dollars, with his costs to be taxed.

No. 200. — DECREE ON THE MERITS, WITH REFERENCE TO A COMMISSIONER.

This cause having been heard on the pleadings in the cause, and having been argued by the advocates of the respective parties, and due deliberation being had, it is now ordered, adjudged, and decreed, that the libellant recover against the defendant the amount due by the charter party, [or bill of lading — or bottomry — or respondentia bond — or for the materials — or for the supplies mentioned in the pleadings,] and that it be referred to a commissioner to ascertain the amount so due, after making all proper allowances, and that he report the same to the court, with all convenient speed.

No. 201. — FINAL DECREE OF FORFEITURE ON A LIBEL OF INFORMATION.

The monition issued in this cause, having been heretofore returned, and the usual proclamation having been made, and the default of all persons being duly entered, it is thereupon, on motion of Ogden Hoffman, Esq., attorney for the United States, ordered, sentenced, and decreed, by the court now here, and his Honor the District Judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree, that the four cases of broadcloths, mentioned in the libel in this cause, be, and the same accordingly are condemned as forfeited to the United States.

And upon like motion, it is further ordered, sentenced, and decreed, that the clerk of this court issue a decree of *venditioni exponas* to the marshal of the district, returnable upon the day of next. And that upon the return thereof, the clerk distribute the proceeds according to law.

No. 202. — FINAL DECREE FOR THE DEFENDANT IN A POSSESSORY AND PETITORY SUIT.

This cause having been heard on the pleadings and proofs, and argued by the advocates of the respective parties, and due deliberation being had in the premises, and it appearing to the court that the claimant has made out a sufficient and valid title to the vessel, it is now ordered, adjudged, and decreed by the court, that the libel filed in the cause be dismissed with costs, to be taxed against the libellant. And on motion of the proctors for the claimant, it is further ordered, that unless an appeal be taken to this decree, within the time limited and prescribed by the rules of this court, the claimant's stipulations be cancelled.

No. 203. — FINAL DECREE ON A PEREMPTORY EXCEPTION TO THE LIBEL.

This cause having been heard on exceptions filed by the libellant to the

plea interposed by the respondent, and having been argued by the advocates for the respective parties, and on due deliberation, the court doth now order, adjudge, and decree, that the exceptions filed by the libellant to the plea of the respondent of a former trial and decree, upon the subject-matter of this suit, be overruled with costs to be taxed, and that the libel of the libellant be decreed, barred, and be dismissed, with costs to be taxed, unless the libellant shall elect to reply to said plea, and in that case, that he have leave to file a replication thereto, within ten days, on payment of the costs created by such exception to be taxed.

No. 204. — DECREE OVERRULING EXCEPTIONS TO AN ANSWER.

This cause coming on to be heard on exceptions filed by the libellant to the answer of the respondent, and having been argued by the advocates for the respective parties, and due deliberation having been had in the premises, it is now ordered and decreed by the court, that the exceptions of the libellant to the answer of the respondent be disallowed and overruled, with costs to be taxed.

No. 205. — DECREE SETTLING PRIORITY IN DISTRIBUTION OF PROCEEDS IN COURT, IN SEVERAL CAUSES.

(Titles of all the causes affecting the proceeds in court.)

No exception being taken to the clerk's reports in either of the above cases, and the question being agitated which, if any, of the parties is entitled to priority of payment, and also, whether costs are to have precedence in satisfaction, where the debts are only entitled to *pro rata* payment, and the court having been moved to decree a distribution of the proceeds of the brig *Triumph*, her tackle, &c., now in the registry, and advocates for the respective parties having been heard, and due deliberation had in the premises, it is ordered and decreed, that the demand of Elisha B. Baker, for services rendered as pilot, together with his taxed costs, be first paid out of the fund in court; that then the amounts reported due the several libellants in the suits on which the vessel was arrested, be paid them respectively, together with their taxed costs, according to the order in which their attachments were made on the vessel. And that the several petitioners be afterwards paid ratably out of the surplus, after satisfaction of the other suitors, together with their costs to be taxed.

No. 206. — DECREE FOR LIBELLANT ON A CHARTER PARTY.

This cause having been heard upon the pleadings and proofs, and the premises being considered, and it appearing to the court that the cargo of the brig *Virginia*, was well and securely stowed, and was, on her arrival at this port,

delivered to the respondent, pursuant to the tenor and effect of the charter party in the pleading mentioned, and in good condition except 4,500 segars, injured by the dangers of the sea: and it further appearing to the court that the libellant brought in the said vessel from Havana to New York, boxes of segars and bales of tobacco laden in the cabin of the said vessel, and not embraced within the provisions of the charter party, it is therefore considered by the court, that the libellant recover his affreightment, in this case due and stipulated by the said charter party, and also the accustomed freight for the said boxes of segars and bales of tobacco, laden in the cabin of said vessel; and that it be referred to the clerk to ascertain and compute the amount due according to the tenor of this decree; and it is further ordered, that, in taking such account, the clerk allow the respondent all proper credits for payments made pursuant to the charter party, and also credit for the value at Havana of one quarter box of segars, laden in the cabin, unless the respondent elects to take the one quarter box delivered from the vessel to the public store, it not having the proper mark of the respondent, corresponding with the bill of lading. It is further ordered, that the libellant recover his costs to be taxed.

**No. 207.—DECREE ON SPECIAL MOTION DISMISSING LIBEL WHEN PROCESS
HAD IMPROVIDENTLY ISSUED.**

Mr. Burr, proctor for the claimants, reads and files affidavit of notice of motion, and affidavit of service, and moves that the vessel be discharged from custody.

Mr. Zabriskie, proctor for the libellant, reads and files two affidavits, and argues in opposition to the motion.

Ordered, that the libel be dismissed and the vessel discharged from custody of the marshal forthwith.

**No. 208.—DECREE FOR WAGES AND SHORT ALLOWANCE FOR A PART OF THE
VOYAGE, AND FORFEITURE OF THE RESIDUE.**

This cause having been re-argued upon the merits, by consent of the counsel for both the parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed, that the libellant recover for the eight months service on board the vessel, up to his payment, in Hamburgh, the sum of eighty dollars, and for short allowance during that period, thirteen 38-100th dollars—in the whole, ninety-three 38-100ths dollars, deducting therefrom his advance of twelve dollars, and nine dollars paid him as per receipt, amounting to the sum of twenty-one dollars, and that the defendant pay to the libellant the balance, amounting to seventy-two 38-100ths dollars, together with his costs to be taxed. And that the libellant's wages earned on the circuitous voyage from Hamburg to Buenos Ayres, be decreed forfeited for desertion at the latter place.

No. 209. — NOTICE OF REFERENCE.

District Court of the United States for the Southern District of New York.

A. B.,
 vs.
 C. D. } *Notice of Reference.*

In conformity with the order entered in the above entitled cause, you will please to take notice, that the reference ordered therein, will be proceeded with, before me, at my office at the United States Courts, on the day of at o'clock in the noon of that day, at which time and place you are hereby notified to attend with the testimony you may have to offer in the matter referred.

Dated, New York, the day of A. D. 18
 Ypura, &c.,

GEORGE W. MORTON,
 U. S. Commissioner.

To E. F., Proctor for Libellant.
 G. H., Proctor for Defendant.

No. 210. — REPORT OF COMMISSIONER ON A GENERAL ORDER TO COMPUTE.

District Court of the United States for the Southern District of New York.

A. B.,
 vs.
 C. D. } *Commissioner's Report.*

In pursuance of a decretal order made in the above entitled cause, on the day of in the year of our Lord one thousand eight hundred and by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant for materials, [or other cause,] and to report thereon to this court with all convenient speed.

I, Charles W. Newton, the commissioner to whom the matter was referred, do report that I have been attended by the proctor for the libellant and the proctor for the defendant, and have taken and examined the testimony offered in support of the libellant's claim, and also that offered in reduction thereof, and do find that there is due to the libellant the sum of dollars.

Dated the day of A. D. 18
 All which is respectfully submitted.

CHARLES W. NEWTON,
 U. S. Commissioner.

E. F., Proctor for Libellant.

NO. 211. — REPORT OF A COMMISSIONER ON AN ORDER OF REFERENCE TO
TAKE AND REPORT THE TESTIMONY AS TO THE AMOUNT OF DAMAGES.

District Court of the United States for the Southern District of New York.

A. B.,
vs.
C. D. }

I, George W. Morton, a commissioner to whom it was referred, to take and report the testimony of the amount of damages in this cause, do report that I have been attended by the proctors for the respective parties, and have examined all the witnesses which have been produced before me, and they gave the following testimony:

John Jones, a witness for the libellant, being sworn, testified that, &c.—
and so on with the other witnesses.

All which is respectfully submitted.

GEORGE W. MORTON,
U. S. Commissioner.

E. F., Proctor for Libellant.

NO. 212. — REPORT OF A COMMISSIONER ON A SPECIAL ORDER OF REFERENCE
— REPORTING THE TESTIMONY.

U. S. District Court.

VALENTINE LARA,
vs.
THE BRIG HENRY BUCK, HER TACKLE, &c. } *Commissioner's Report, under the
order of Court, of June, 1847.*

In pursuance of a decretal order made in the above entitled cause, by which, among other things, it was referred to a commissioner to ascertain and report the amount due the libellant, and it was ordered, that the claimant have leave to strike the name of David Woodside from the claim and answer filed in the cause, and also have leave to examine him as a witness on the reference in this cause, before the commissioner, subject to all legal exceptions:

I, George W. Morton, the commissioner before whom the reference was had, do report, that I have been attended by the proctors for the libellant and the claimant, and have taken and examined the testimony offered by the respective parties, and do find, on the testimony of David Woodside, that the claimants are entitled to credits sufficient, with the amount paid into court by them, to cover the amount decreed the libellant, and that there is nothing due the libellant beyond the amount paid into court by the claimants.

At the request of the proctor for the claimants, I have annexed to this report all the testimony taken under the orders of reference in the cause,

together with a copy of the judge's minutes of testimony taken on the hearing.

Dated December 4th, 1847.

All which is respectfully submitted.

GEORGE W. MORTON,
U. S. Commissioner.

A. NASH, Proctor for the Libellant.

Exceptions.

No. 213. — EXCEPTIONS BY THE LIBELLANTS TO THE FOREGOING REPORT.

U. S. District Court.

VALENTINE LARA,	}	<i>Exceptions to Commissioner's Report.</i>
<i>vs.</i>		
THE BRIG HENRY BUCK, &c.		

The libellant excepts to the Commissioner's Report made under the order of the court, entered in this cause, in June last.

First. Because the witness, David Woodside, who was examined before the said commissioner, as a witness for the claimants, was, at the time of his examination and cross examination, a part owner of the vessel, and therefore an incompetent witness for the vessel.

Second. Because the witness, David Woodside, was interested in the event of the suit.

Third. Because the said commissioner has not in his said report, stated the amount of the credits which he allowed to the claimants, on the testimony of said Woodside.

BURR & BENEDICT,
Proctors for Libellants.

No. 214. — EXCEPTIONS BY A DEFENDANT TO THE REPORT OF THE CLERK OR A COMMISSIONER.

United States District Court.

RAMAN DE ZALDO,	}
<i>ads.</i>	
ELISHA BURGESS.	

The respondent hereby excepts to the report of the clerk made herein, and by him this day filed, for the following causes, that is to say —

First. Because the said clerk hath not in his said report, allowed as a credit to him, the said respondent, the sum of twenty-five dollars, duly paid to Captain Farnham, by him the said respondent, as appears by the testimony taken in this cause.

Second. Because the said clerk hath not, in his said report, allowed as a credit to him the said respondent, the sum of one hundred and six dollars and seventy-five cents, duly paid to Captain Farnham, by the agent and consignee of this respondent, at Havana, in the Island of Cuba, as appears by the like testimony,

March 5th, 1844.

EDGAR LOGAN,
Proctor for Respondent.
A. D. LOGAN, Advocate.

No. 215. — A DILATORY EXCEPTION TO A LIBEL. — (*Vide ante*, page 279.)

No. 216. — A PEREMPTORY EXCEPTION TO A LIBEL. — (*Vide ante*, page 279.)

No. 217. — EXCEPTIONS TO A LIBEL FOR MISJOINDER.

United States District Court.

The Schr. NAOMI, &c., and
JOHN W. HALL,
ads.
DAVID J. BROWN. }

John W. Hall, the respondent, excepts to the libel in this cause for this: —

First. That it misjoins in the same cause a suit *in rem* against the schooner Naomi, and a suit *in personam* against John W. Hall, the master thereof.

Second. That it misjoins an alleged cause of action against the vessel for a violation of a charter party, and also an alleged cause of action against John W. Hall, for the appropriating certain property by the said John W. Hall.

Third. That it misjoins parties who cannot rightfully be joined in such a suit, and misjoins causes of action which cannot be rightfully joined in such a suit.

C. L. BENEDICT, Proctor.
E. C. BENEDICT, Advocate.

No. 218. — EXCEPTIONS TO AN ANSWER FOR SCANDAL AND IMPERTINENCE.

District Court of the United States.

EBENEZER N. HINCKLEY, }
vs.
DAVID H. ROBERTSON. }

Exceptions taken by the libellant to the answer of David H. Robertson, respondent in this cause.

First Exception. — For that the allegations in the said answer, in the words following, to wit: "That during the time the libellant was at Antwerp, the captain of one of the deponent's vessels, the [Henry Kneeland, at Antwerp, the same time as the libellant, wrote to respondent, advising him as follows: 'I very much fear the voyage of the Majestic will turn out even worse than the Kneeland's, having met with an accident on her voyage; the ship is yet here, but ought to have been gone hence at least a week ago. Her commander is one of the last men that ought to be entrusted with the command of a ship; I have every reason for saying so, and feel it my duty to apprise you of it, and if not fully insured would recommend being so, as I think the ship not safe under the present command; and it is the opinion of the masters of ships here that I should apprise you of it; he is never seen about the ship, and appears to have lost himself altogether;'" are scandalous and impertinent, and ought to be expunged.

Second Exception. — For that the allegations in the said answer immediately following the matter quoted in the first exception, that is to say, "That deponent is informed and believes the libellant's neglect of duty was notorious at Antwerp at the time, and respondent was constantly informed of the same by persons subsequently arriving from that place," are scandalous and impertinent, and ought to be expunged.

Third Exception. — For that the allegation in the said answer, in the words following, to wit: "That, as the respondent is informed and believes, at the time the Majestic was loading at Newport, the agent of the cargo, before a notary public, protested against the libellant's incapacity and negligence," is impertinent and ought to be expunged.

Fourth Exception. — For that the allegation in the said answer, in the words following, to wit: "That the vessels owned by respondent, which sailed with the same orders as libellant's, and were at Antwerp at the same time, made good voyages, and arrived at this port in the spring of the year, and have since proceeded on other voyages," is impertinent and ought to be expunged.

In all which particulars the said libellant humbly insists that the respondent's said answer is irrelevant, impertinent, and scandalous; wherefore the libellant excepts thereto, and humbly prays that the impertinence and scandal of the said answer excepted to as aforesaid, may be expunged with costs.

BURR & BENEDICT,
Proctors for Libellant.
BURR, Advocate.

No. 219. — EXCEPTIONS TO AN ANSWER FOR INSUFFICIENCY.

District Court of the United States.

RAMON DE ZALDO
vs.
 The Brig ALDEBARON, her tackle, &c.,
 and EBENEZER WHEELRIGHT. }

Exceptions taken by the libellant to the answer of Ebenezer Wheelright, respondent, to the libel and complaint of the said Ramon de Zaldo, filed in this cause.

First Exception. — For that the said respondent has not well and sufficiently answered and set forth whether the agent of the libellant made and entered into an agreement with the said George C. Prior, as master and agent for the owners of said brig, on or about the twenty-sixth day of October, 1844, that the said brig should proceed to and take in a cargo at the port of Havana, and that the libellant or his agent should pay therefor the sum of one hundred dollars in addition to the compensation mentioned in the charter party; and whether the sum of one hundred dollars was paid in pursuance of said agreement by this libellant's agent to the said master, as is alleged by the libellant's libel on file, in article 4th, page 5, lines 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19.

Second Exception. — For that the said respondent has not well and sufficiently answered and set forth whether, in pursuance of the last mentioned agreement, the said brig set sail from Cienfuegos to Havana, as is alleged in the libellant's libel, on file, in article 5th, page 5, lines 28, 29, and 30.

In all which particulars the said answer of the said respondent is imperfect, insufficient, and evasive, and the libellant therefore excepts thereto, and prays that the said respondent may put in a further and better answer to the said libel.

J. B. PURROY,

Proctor for the Libellant.

NATH'L F. WARING,

Advocate.

No. 220. — EXCEPTIONS TO INTERROGATORIES TO A PARTY OR GARNISHEE.

District Court of the United States.

A. B.,
vs.
 C. D. }

Exceptions to the interrogatories addressed to the libellant [or defendant, or E. F., garnishee.]

First. The said libellant [or defendant, or garnishee,] excepts to the fourth interrogatory, for the reason that the answer thereto will expose him to a prosecution for a penalty, and he is not by law obliged to answer the same.

Second. He excepts in the seventh interrogatory, for the reason that it only inquires in relation to hearsay and the declarations of third persons, which are not competent evidence.

E. F., Proctor and Advocate for Libellanta, &c.

No. 221. — EXCEPTIONS TO ANSWERS OF A PARTY OR GARNISHEE TO INTERROGATORIES.

District Court.

A. B.,
vs.
 C. D. }

Exceptions to the answers of the libellant [or the defendant, or E. F., garnishee,] to the interrogatories addressed to him.

First. The defendant [or libellant, or garnishee,] excepts to the answer to the first interrogatory, for the reason that instead of answering the interrogatory fully, directly, and positively, it answers the same evasively and indirectly, so far as it does answer the same, and omits wholly to answer how long the said defendant was confined in irons in the hold of said brig.

Second. He excepts to the answer to the fifth interrogatory, for the reason that said answer is impertinent and scandalous.

E. F., Proctor and Advocate for Deft, &c.

No. 222. — EXCEPTIONS TO A DEPOSITION DE BENE ESSE.

U. S. District Court.

THOMAS DAVIS, and others, }
vs.
 FRANCIS HATHAWAY, et al. }

SIR, — You will please to take notice, that we object to the deposition of Charles E. Prescott, taken *ex parte de bene esse*, in this cause, because —

1st. It was not sealed up nor kept by the magistrate, nor delivered by him into court, according to law, but the contrary appears.

2d. It is without date or jurat.

3d. It is not accompanied by the proper certificate of the commissioner.

4th. The witness was not properly cautioned and sworn.

5th. There is no evidence of the reasons for taking the deposition, or of the facts that rendered it proper or necessary to take it.

6th. It is impossible to tell which deposition the certificate of the commissioner refers to.

7th. The certificate appears not to have been given at the time of the taking of the deposition, but a long period afterwards; and it does not appear

whether the facts certified relate to the time of the taking the one deposition or the other, or of the certificate.

Dated Dec. 16th, 1842.

Yours, &c.,

BURR & BENEDICT,

Proctors for Libellants.

To Daniel Lord, Esq., and George B. Butler, Esq.,

Proctors for Defendants.

No. 228. — INTERROGATORIES PROPOUNDED TO A PARTY.

If the interrogatories are annexed to a pleading — let them follow immediately after the signatures and jurat to the pleading, with the following caption :

Interrogatories propounded to the defendant (*or the libellant*), which he is required to answer in writing, under oath.

If the interrogatories are propounded independently of any pleading, let them be entitled in the cause as follows :

District Court of the United States.

A. B.,	}
vs.	
C. D.	

Interrogatories propounded to the libellant (*or the defendant*), which he is required to answer in writing, under oath.

First Interrogatory. — What was the date of the arrival of the said ship M. Howes, at Londonderry? and when did she arrive at the usual place of discharge in said port?

Second. How soon after the arrival of said ship at such port, did the master notify the consignees of said ship of his arrival?

Third. How soon after such arrival was the discharge of the cargo commenced? Why was it not commenced sooner? When was the vessel fully discharged? On what days was any part of the cargo discharged? How much was discharged on each of those days respectively? During how many days, or parts thereof, was the weather so stormy or bad as to render the cargo liable to damage, if delivered? When did the vessel leave the said port, on her return voyage? Why did she not leave sooner?

Fourth. Was not a part of the cargo in a damaged state on arrival, and if yea, how much? Was not two hundred bushels of corn and upwards, so damaged? Was not such damage owing to the master or persons in charge of her, having stowed the quantity so damaged in bulk, instead of in bags, as required by the agreement between the libellants and defendants, and by the bill of lading?

Fifth. Were there not some disputes between the said consignees and the said master in relation to said damaged cargo and the freight, and if yea,

were not the disputes submitted to arbitration? What were the subjects which were submitted to arbitration, and what was the award?

Sixth. Where was the master of said vessel when she was ready for sea, and if he was not at Londonderry, how soon after she was ready for sea did he return to Londonderry? Was the said master at Londonderry each and every day from the time said vessel arrived at said port, till she left on her return voyage? and if you answer in the negative, state particularly on what day or days, and what parts thereof, he was absent during the said time.

Seventh. Were you not aware, at the time the agreement to him was made, that the defendants were acting as agents, and who they were acting for, and that the defendants were not the principals in the charter.

S. L. M. BARLOW,
Proctor for Defendants.

New York, June 26, 1849.

No. 224. — ANSWERS BY A PARTY TO INTERROGATORIES.

District Court of the United States.

A. B.,
vs.
C. D. }

Answers of A. B., libellant (or of C. D., defendant), to the interrogatories propounded to him in this cause.

To the first interrogatory, he says, &c.

*The answer must be signed by the party answering, and be sworn to as follows :
Southern District of New York, ss. :*

A. B., the foregoing respondent, being sworn, says — That the foregoing answers subscribed by him are true.

A. B.

Sworn January 4, 1850,
before me,

GEORGE W. MORTON,
U. S. Commissioner.

Interrogatories to be annexed to a commission, *ante*, No. 86, page 521, *post*, No. 262, page 696.

Answers to same, *ante*, No. 88, page 523, *post*, No. 265, page 700.

Cross-interrogatories, to be annexed to a commission, *ante*, No. 87, page 522, *post*, No. 263, page 697.

Answers to same, *ante*, No. 88, page 524, *post*, No. 265, page 700.

Interrogatories to a garnishee, *ante*, No. 187, page 656.

Answers to same, *ante*, No. 188, page 657.

No. 235. — PREPARATORY INTERROGATORIES IN PRIZE CASES.

Standing interrogatories to be administered by a prize commissioner to all persons that may be produced as witnesses to be examined in preparatorio, in relation to any ship or vessel, goods, wares, or merchandise, which may be captured or taken as prize and brought into the Southern District of New York.

Let each witness be interrogated to every of the following questions, and their answers to each interrogatory be written down under his direction and supervision :

1. Where were you born, and where do you now live, and how long have you lived there? Of what province or state are you a subject or citizen, and to which do you owe allegiance? Are you a citizen of the United States of America? Are you a married man, and, if married, where do your family and wife reside?

2. Were you present at the capture or taking of the vessel, or her lading, or any of the goods or merchandises concerning which you are now examined?

3. When and where was such seizure and capture made, and into what place or port were the same carried? Had the vessel so captured any commission, or letters, authorizing her to make prizes? What, and from whom? For what reasons or on what pretence was the seizure made?

4. Under what colors did the captured vessel sail? What other colors had she on board, and for what reason had she such other colors?

5. Was any resistance made at the time of the capture, and by whom? Were any guns fired, how many, and by whom? By what ship or ships was the capture made? Were any other, and what ships in sight at the time of the capture? Was the vessel captured a merchantman, a ship-of-war, or acting under any commission as a privateer or letter of marque and reprisal, and to whom did such vessel belong? Was the capturing vessel a ship-of-war, a letter of marque and reprisal, or privateer, and of what force?

6. Had the capturing vessel or vessels any commission to act in the seizure or capture of the vessel inquired about, and from whom, and by what particular vessel was the capture made? Was the vessel seized, condemned, and if so, when and where, and for what reason, and upon what account, and by whom, and by what authority or tribunal was she condemned.

7. What was the name of the vessel taken, and of her master or commander? Who appointed him to the command of the said vessel, and where? How long have you known the vessel and him, and when and where did he take possession of her, and who by name delivered the same to him? Where is the fixed place of abode of the master, with his wife and family, and how long has he lived there? If he has no fixed place of abode, where was his last place of residence, and how long did he live there? Where was he born? Of what country or state is he a subject or citizen?

8. Of what tonnage or burden is the vessel which has been taken, and about which you are examined? What number of the vessel's company belonged to

her at the time she was seized and taken, and how many were then actually on board her? What countrymen are they? Did they all come on board at the same port and time, or at different ports and times, and when and where? Who shipped or hired them, and when and where?

9. Did you belong to the company of the vessel so captured, at the time of her seizure, and in what capacity? Had you, or any of the officers, or mariners, or company, belonging to the said vessel at the time of her capture, any part, share, or interest in the same, or in the goods or merchandise laden on board her, and what in particular, and what was the value thereof at the time the said vessel was captured, and the said goods seized.

10. How long have you known the said vessel? When and where did you first see her? How many guns did she carry? How many men were on board of her at the beginning of the engagement, before she was captured? Of what country build was she? What was her name, and how long was she so called? Whether do you know of any other name she was called by, and what were such names, as you know or have heard?

11. To what ports and places was the vessel, concerning which you are now examined, bound on the voyage wherein she was taken and seized? Where did the voyage begin, and where was the voyage to have ended? What sort of lading did she carry at the time of her first setting out on the voyage, and what particular sort of lading and goods had she on board at the time she was taken and seized? In what year and in what month was the same put on board? Do you, or not, know she had on board during her last voyage, and when, goods contraband of war, or otherwise prohibited by law, and what goods?

12. Had the vessel of which you are examined any passport or sea-brief on board, and from whom? To what ports or places did she sail during her last voyage, before she was taken? Where did her last voyage begin, and where was it to have ended? Set forth the kind of cargoes the vessel has carried to the time of her capture, and at what ports such cargoes have been delivered. From what ports, and at what time, particularly from the last clearing port, did the said vessel sail, previously to the capture?

13. What lading did the vessel carry at the time of her first setting sail in her last voyage, and what particular sort of lading and goods had she on board at the time she was taken? In what year and in what month was the same put on board? Set forth the different species of the lading, and the quantities of each sort.

14. Who were the owners of the vessel and goods, concerning which you are now examined, at the time of their capture and seizure? How do you know they were owners thereof at that time? Of what nation or country are they by birth, and where do they live with their wives and families? How long have they resided there? Where did they reside previously, to the best of your knowledge? Of what country or state are they subjects or citizens?

15. Was any bill of sale given, and by whom, to the owners of the said ves-

sel, and in what month and year? Where, and in presence of what witnesses, was it made? Was any, and what engagement entered into concerning the purchase, further than what appears upon the bill of sale? Where did you last see it, and what has become of it.

16. In what port or place, and in what month and year, was the lading found on board the vessel, at the time of her capture or seizure, first put on board her? What were the names of the respective laders or owners, or consignees thereof? What countrymen are they? Where did they reside before, to the best of your knowledge, and where were the said goods to be delivered, and for whose real account, risk, or benefit? Have any of the said laders or consignees any, and what interest in the said goods? What were the several qualities, quantities, and particulars of the said goods, and have you any, and what reason to know or fully believe that if the said goods shall be restored and unladen at the destined ports, they did, do, and will belong to the same persons, and to none others.

17. How many bills of lading were signed for the goods seized on board the said vessel? Were any of those bills of lading false or colorable, or were any bills of lading signed which were different in any respect from those which were on board the vessel at the time she was taken? What were the contents of such other bills of lading, and what became of them?

18. Have you in your possession, or were there on board of the said vessel, at the time of her capture, any bills of lading, invoices, letters, or other writings, to prove or show your own interest, or the interest of any other person, and of whom, in the vessel or in the goods concerning which you are now examined? If in your power, produce the same, and set forth the particular times when, where, and in what manner, and upon what consideration, you became possessed thereof. If you cannot produce such paper evidences, then state in whose possession you last saw them, or where you know or believe they are kept, and when, and by whom they were brought or sent within this district, and also set forth the contents or purport of such papers.

19. State the degrees of latitude and longitude in which the said vessel and her cargo were captured, as also the year, month, and day, and time thereof, in which such seizure was made, and in or near what port or place, and whether it was a port of any State or Territory of the United States of America, and what one. Was any charter party for the voyage upon which the said vessel was captured signed and executed, and by whom, and when? If in your possession, produce the same. If not, set forth its contents and state what has become of it.

20. What papers, bills of lading, letters, or other writings relating to the vessel or cargo, were on board the vessel at the time she took her departure from her last clearing port, before she was taken as prize? Were any of them burnt, torn, thrown overboard, destroyed, or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

21. Did you or the owner, master, or person having command of the said

vessel or her navigation, at the time and place of her capture, know or have notice that such place or port was in a state of war with the United States, and that the naval forces of the United States held such port in a state of blockade? How, when, or where had you such knowledge or notice, and when and where did the master or commandant obtain it?

22. Was such port under an order of blockade by the Government of the United States, at the time the said vessel entered or made an attempt to enter the same? Had warning or notice of such blockade been given to, or received by the owner, master or commandant of said vessel, before or at the time she entered, or attempted to enter the said port, and when, and in what manner? Had notice in writing been indorsed on the register or other ship's papers of the said vessel, and when, where, and by whom, of an existing blockade of such port, before she entered, or attempted to enter the same, or before the time of her sailing, or attempting to sail therefrom?

23. Was the register of the vessel, about which you are examined, shown to, or examined by any officer of the United States navy, or by any revenue officer of the United States, before she was captured and taken, and before she entered the port at, or near which, she was taken and seized, and was the register, or other ship's papers, indorsed by said United States officer? Declare fully all you know, or have reason to believe, respecting this interrogatory, stating the persons, times, and places connected therewith.

24. Do you know, or do you believe from information, and if the latter, from what information, and when and how was it obtained, that the vessel inquired about, at any time or times, after the blockade of the said port, and with notice thereof, and when, attempted covertly and secretly to enter the said blockaded port, or to sail therefrom, without success? Disclose fully all your knowledge, information, and belief thereon, with the particulars upon which the same is founded.

25. Has the vessel, concerning which you are now examined, been at any time, and when, seized as prize and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned.

26. Have you sustained any loss by the seizing and taking the vessel concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction, or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

27. Is the said vessel or goods, or any, and what parts, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

28. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

29. Let each witness be interrogated of the growth, produce, and manufacture, on board the vessel. Of what country and place was the lading, concerning which they are now interrogated, or any part thereof?

30. Whether all the said cargo, or any and what part thereof, was taken from the shore, or quay, or removed, or transhipped from one vessel to another, from what and to what shore, quay, and vessel, and when and where was the same so done?

31. Are there in any country besides the United States, and where, or on board any and what vessel, or vessels, other than the vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers, or documents, relative to the said vessel or cargo, and of what nature are they, and what are their contents?

32. Were any papers delivered out of the said vessel, and carried away in any manner whatsoever, and when, and by whom, and to whom, and in whose custody, possession, or power do you believe the same now are?

33. Was bulk broken during the voyage on which you were taken, or since the capture of the said vessel, and when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

34. Were any passengers on board the aforesaid vessel? Were any of them secreted at the time of the capture? Who were the passengers by name? Of what nation, rank, profession, or occupation? Had they any commission — for what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any and what property, or concern, or authority, directly or indirectly, regarding the vessel and cargo? Were there any officers, soldiers, or mariners, secreted on board, and for what reason were they secreted? Were any citizens of the United States on board, or secreted, or confined at the time of the capture? How long, and why? Whether any persons on board the said vessel, at the time of her capture, were citizens or residents of any State or Territory of the United States then in a state of war or rebellion against the United States, its government and laws. If so who by name, and of what State or Territory? What was their employment on board the vessel, and what their destination?

35. Were and are all the transports, sea-briefs, charter parties, bills of sale, invoices, and papers which were found on board, entirely true and fair, or are any of them false or colorable? Do you know of any matter or circumstance to affect their credit? By whom were the passports or sea-briefs obtained, and from whom? Were they obtained for this vessel only, and upon the oath or affirmation of the persons therein described, or were they delivered to or on behalf of the person or persons who appear to have been sworn or to have affirmed thereto without their having ever, in fact, made any such oath or affirmation? How long a time were they to last? Was any duty or fee payable and paid for the same, and is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often, and has the duty

or fee been paid for such renewal? Was the vessel in a port in the country where the passports and sea-briefs were granted; and if not, where was the vessel at the time? Had any person on board any passport, license, or letters of safe conduct? If yea, from whom, and for what business? If it should appear that there are in the United States, or in any other place or country besides the United States, any bills of lading, invoices, instruments, or papers, relative to the vessel and goods concerning which you are now examined, state how they were brought into such place or country. In whose possession are they, and do they differ from any of the papers on board, or in the United States, or elsewhere, and in what particular do they differ? Have you written or signed any letters or papers concerning the vessel and her cargo? What was their purport? To whom were they written and sent, and what has become of them?

86. Towards what port or place was the vessel steering her course at the time of her being first pursued and taken? Was her course altered upon the appearance of the vessel by which she was taken? Was her course at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship papers? Was the vessel, before or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship papers? At what distance was she therefrom? Was her course altered at any, and what time, and to what other port or place, and for what reason?

87. By whom and to whom hath the said vessel been sold or transferred, and how often? At what time and at what place, and for what sum or consideration? Has the same been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent, or what security or securities have been given for the payment of the same; and by whom, and where do they now live? Do you know or believe in your conscience, such sale or transfer has been truly made, and not for the purpose of covering or concealing the real property? Do you verily believe that if the vessel should be restored, she will belong to the persons now asserted to be the owners, and to none others?

88. What guns were mounted on board the vessel, and what arms and ammunition were belonging to her? Why was she so armed? Were there on aboard any other guns, weapons, warlike arms, or armament of any name or description, and if any, what? Were there any parts of warlike arms, not put together or finished, or any ammunition, fixed or unfixed, or any balls, shells, rockets, hand-grenades, flints, percussion caps, or any other thing known to be intended for military equipment? Were there any belts, ball-moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing, or accoutrements, or any parts of them, or any sort of warlike or naval stores? Were any of such warlike or naval stores, or things, thrown overboard to prevent suspicion at the time of the capture; and were any such warlike stores, before described, concealed on board under the name of merchandise, or any other colorable appellation, in the ship papers? If so, what are the marks on the casks,

bales, and packages in which they were concealed? Are any of the before named articles, and which, for the sole use of any fortress or garrison in the fort or place to which such vessel was destined? Do you know, or have you heard of any ordinance, placard, or law, existing in such country or state forbidding the exportation of the same by private persons, without license? Were such warlike or naval stores put on board by any public authority? When and where were they put on board?

39. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the vessel and cargo concerning which you are now examined, at the time of the capture.

40. Did the said vessel, on the voyage in which she was captured (or on), or during any or what former voyage or voyages, sail under the convoy of any ship or ships of war, or other armed vessel or vessels? For what reason or purpose did she sail under such convoy? Of what force was or were such convoying ship or ships, and to what state or country did the same belong? What instructions or directions had you or did you receive on each and every of such voyages, when under convoy, respecting your sailing or keeping in company with such armed or convoying ship or ships; and from whom did you receive such instructions or directions? Had you any, and what directions or instructions, and from whom, for resisting, or endeavoring to avoid or escape from capture, or for destroying, concealing, or refusing to deliver up your vessel's documents and papers; or any, and what other papers, that might be or were put on board your said ship? If so, state the tenor of such instructions, and all particulars relating thereto. Are you in possession of such instructions, or copies thereof? If so, leave them with the commissioner, to be annexed to your deposition.

41. Did the said vessel, during the voyage in which she was captured, or on making any and what former voyage or voyages, sail to or attempt to enter, any port under blockade by the arms or forces of any, and what, belligerent power? If so, when did you first learn or hear of such port being so blockaded, and were you at any, and what time, and by whom, warned not to proceed to, or to attempt to enter into, or to escape from, such blockaded port? What conversation or other communication passed thereon? And what course did you pursue upon and after being so warned off?

42. Whether or no the vessel concerning which you are examined, did sail on her last voyage prior to her seizure, carrying a commission or license as a privateer, or letter of marque and reprisal, or other authority from any person or persons, to cruise against the persons or property of citizens of the United States, and to make prizes thereof? By whom was such authority, license or direction given, and when? Was it in writing? If so, did it remain with the vessel up to the time of her capture, or was it destroyed or concealed previous thereto? When, and by whom? What were the contents or purport thereof? State all the facts, in your knowledge within this inquiry, and the

sources of such knowledge. Also state fully all the acts known to you to have been done by the vessel, her master or crew, under such commission or license up to the period of her capture.

43. Whether or no the said vessel inquired about, at any time, and when and where, sailed or acted in company or concert with any other armed vessel or vessels, and what, in cruising against, pursuing, or seizing as prize, any persons, vessels, or property of citizens of the United States? Declare fully and particularly your knowledge, information, and belief therein.

No. 226. — DEPOSITIONS OF WITNESSES IN PREPARATORIO IN PRIZE CASES.

District Court, &c.

The examination and depositions of witnesses *in preparatorio*, touching the capture and seizure of the schooner Flying Fish, and the goods and merchandises on board of her, made by the privateer schooner of war, Mary, Edward Richards, commander.

To the first interrogatory, Joseph Lopez, the deponent, says — That he was born, &c., and so on through the interrogatories.

JOSEPH LOPEZ.

Sworn August 6th, 1813,

before me,

A. B., United States Commissioner.

No. 227. — THE OATH TO BE ADMINISTERED TO WITNESSES IN PREPARATORIO.

“You shall true answers make to all such questions as shall be asked of you in these interrogatories, and therein you shall speak the truth, the whole truth, and nothing but the truth, so help you God.”

No. 228. — OATH TO AN INTERPRETER.

You shall well and truly interpret to the witness the oath administered to him, and the interrogatories propounded to him; and you shall well and truly interpret to the Commissioners the answers given by the witness to the respective interrogatories, so help you God.

No. 229. — LETTERS ROGATORY TO A FOREIGN JUDGE OR TRIBUNAL.

The President of the United States of America, to any judge or tribunal having jurisdiction of civil causes, at Havana, in the Island of Cuba.

Whereas a certain suit is pending in our District Court of the United States for the Southern District of New York, in which James Jones is libellant, and John D. Nelson, Henry Abbot, and Joseph E. Tatem, are claimants of the

schooner Perseverance, her tackle, apparel, furniture, and cargo, and it has been suggested to us that there are witnesses residing within your jurisdiction, without whose testimony justice cannot be completely done between the said parties: We therefor request you that in furtherance of justice, you will, by the proper and usual process of your court, cause such witness or witnesses as shall be named or pointed out to you by the said parties or either of them, to appear before you, or some competent person by you for that purpose to be appointed and authorized, at a precise time by you to be fixed, and there to answer on their oaths or affirmations to the several interrogatories hereunto annexed, and that you will cause their depositions to be committed to writing, and returned to us under cover, duly closed and sealed up, together with these presents. And we shall be ready and willing to do the same for you in a similar case, when required.

Witness, the Honorable Samuel R. Betts, judge of the said court, at the city of New York, the tenth day of May, in the year of our Lord one thousand eight hundred and twenty, and of our independence the forty-fourth.

A. B., Clerk.

C. D., Proctor for Libellant.

E. F., Proctor for Claimant.

Execution.

No. 230. — VENDITIONI EXPONAS IN A CASE OF SALVAGE, ON AN INTERLOCUTORY ORDER — (*Vide ante*, No. 19, page 509.)

No. 231. — VENDITIONI EXPONAS ON A LIBEL OF INFORMATION — (*Vide ante*, page 330.)

No. 232. — AN EXECUTION IN THE NATURE OF A FIERI FACIAS — (*Vide ante*, page 328.)

No. 233. — ATTACHMENT TO COMPEL THE DEFENDANT TO PERFORM A DECREE — (*Ante*, No. 160, page 644.)

No. 234. — A FIERI FACIAS AGAINST GOODS, CHATTELS, AND LANDS.

The President of the United States of America to the Marshal of the Southern District of New York, Greeting:

Whereas a libel was filed in the District Court of the United States for the Southern District of New York, on the eighteenth day of October, eighteen hundred and forty-one, by Thomas Davis, James Williams, James Collins, and Charles E. Trescott, against Francis Hathaway and Edward Faucon. And such proceedings were thereupon had that by the judgment and decree of the

said court in the said cause entered, on the fifth day of October, one thousand eight hundred and forty-three, the said Francis Hathaway and Edward Faucon were required to pay to the libellant, James Williams, the sum of ninety-six dollars and eighty cents, and to the libellant, Thomas Davis, fifty-nine dollars and twenty cents, besides their costs in this suit, to be taxed, and execution was ordered therefor. And whereas the said costs have been taxed at as by the records and files of said court fully appear.

Now, therefore, we command you, that of the goods and chattels of the said Francis Hathaway and Edward Faucon, in your district, and in default of goods and chattels of them, then of the lands and tenements in your district of which they were seized on the day you shall receive this writ, you cause to be made the sum of and further, that you have those moneys in said court at the City Hall in the city of New York, on the third Tuesday of June, instant, to render to the libellants in satisfaction of said decree.

Witness the Honorable Samuel R. Betts, judge of the said court, the first Tuesday of June, 1845.

Clerk.

BURR & BENEDICT, Proctors.

NO. 285. — THE MARSHAL'S RETURN.

No goods, chattels, or lands.

H. F. T., Marshal.

OR THIS:

I have made on the within execution the sum of being
the within amount, with interest.

Dated July , 1849.

H. F. T., Marshal.

NO. 286. — PETITION FOR REMNANTS AND SURPLUS.

United States District Court — Eastern District of New York.

In the matter of the petition of A. M. Kidley of St. Andrews, N. B., sole owner of the British Brig A. M. Herrera, for the remnants and surplus of said vessel now remaining in the registry of the court—

To the Honorable Charles L. Benedict, Judge of the District Court of the United States, for the Eastern District of New York, the petition of A. M. Kidley, petitioner above named, respectfully shows:

That the said vessel was, on the twenty-fourth day of March, 1870, sold by the marshal of this district, under process issued out of this court upon the libel of Albert B. Mayo and Benjamin F. Tyler, for the sum of seven thousand our hundred dollars, and that said sum has been paid into the registry of this court.

That after payment of the decree and all costs in said suit of Mayo and Tyler against said vessel, there still remains in the registry of this court the sum of two thousand six hundred and twenty-one dollars and one cent, to which your petitioner claims to be entitled.

That your petitioner was the sole owner of said vessel at the time of the aforesaid sale by the marshal.

That no libels, other than said libel of Mayo and Tyler, were filed against said vessel previous to such sale, except two, on which the vessel was discharged, the suits having been settled and discontinued—that no claimant appeared in said suit by Mayo and Tyler, and that no person except your petitioner, has interposed any claim, or as your petitioner believes, has any claim to said remnants and surplus.

Wherefor your petitioner prays that this honorable court will make an order, directing the clerk of this court to pay over to the petitioner, or her proctors, the amount of such remnants and surplus of the said Brig M. A. Herrera, now remaining in the registry of this court.

Sworn to, &c.

No. 287. — ORDER OF REFERENCE ON THE ABOVE PETITION.

On reading and filing the above petition it is ordered, that it be referred to Samuel T. Jones, Esq, a commissioner of this court, to take proof of the facts therein stated.

No. 288. — FINAL DECREE ON THE SAME.

On reading and filing the report of Samuel T. Jones, Esq., United States Commissioner, to whom it was referred to take proof of the matters stated in the petition in the above matter, by which it appears that the petitioner was, at the time of the sale of the said brig M. A. Herrera, by the marshal of this district, the sole owner of the said vessel, and is entitled as such owner to the remnants and surplus of said vessel now remaining in the registry of this court, and that no claims have been made to said remnants and surplus, other than by the petitioner—and that there are no liens upon the same,—and that such remnants and surplus amount to the sum of two thousand six hundred and twenty-one dollars and one cent.

Now, on motion of Benedict & Benedict, proctors for the petitioner, it is ordered, that the said report be, and the same is hereby in all things confirmed, and it is hereby further ordered, adjudged, and decreed that A. M. Kidley, the petitioner herein, is entitled to receive from the registry of this court the amount of said remnants and surplus, as claimed in her petition, and that the same be paid to her, or her proctors herein, by the clerk of this court.

Appeals.

No. 289. — NOTICE OF APPEAL—(ante, page 347.)

United States for the Southern District of New York, against the appellants, each claiming over fifty dollars, praying among other things, for the reasons set forth in said libel, that these appellants might be condemned to pay the demands of said libellants, and costs in said libel mentioned, which libel was afterwards amended.

That process issued out of said court having been served on these appellants, Francis Hathaway and Edward Faucon, they did, on or about the twenty-first day of December, in the year one thousand eight hundred and forty-one, file their separate answers to the said libel, in the said District Court, praying that the said libel be dismissed, with their costs in that behalf, as by reference to said libel and the said answers may more fully appear.

That the said cause came on to be heard before the Honorable Samuel R. Betts, Judge of the said District Court, on or about the 21st, 26th, and 27th days of December, A. D. 1842, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge having advised thereon on the 28th day of March, in the year 1843, made a decree or sentence in said cause, whereby it was among other things sentenced and decreed, that the libellants in said cause recover against these appellants their wages for the entire voyage for which in the said libel they claim the same, up to the time of their discharge by the said Edward Faucon, master of the said barque, as by reference to the said decree, may more fully appear, under which decree a reference was had to the clerk of this court, who reported that there was due to Charles E. Trescott the sum of \$148, to the said James Williams the sum of \$96.80, and to the said Thomas Davis the sum of \$53, which report, on the 5th day of October, was confirmed by the said court by the final decree thereof.

And these appellants are advised and insist that the said decrees are erroneous, inasmuch as the said libellants were not entitled to any wages in the premises.

And these appellants, for these and other reasons, appeal from the whole of the said decree in favor of said Trescott, Williams, and Davis, to the next Circuit Court to be held in the said district, (and on the said appeal they intend only to have the said cause heard anew, on the same pleadings and the same proofs); and they pray that the said decree, and every part thereof, may be reversed, with costs, or such other decree thereupon made, as to the said Circuit Court shall seem just, and that the said appellees be condemned to pay to these appellants their costs and damages in the premises.

or,

(And on the said appeal they intend to have said cause heard anew, in the Circuit Court, on the pleadings and proofs in the District Court, and other proofs to be introduced in the said Circuit Court.)

or,

(And on said appeal they intend to make new allegations in the Circuit Court, and introduce the same and new and further proofs.)

And they pray that the record and proceedings may be returned to the said Circuit Court, and that the said decree may be reversed, or such other decree thereon be made, as to said Circuit Court shall seem just, and that the appellees may be condemned to pay to the appellants their costs and damages in the premises.

A. B., Proctor.

C. D., Advocate.

No. 242. — AFFIDAVIT OF SERVICE OF A COPY OF THE APPEAL.

Southern District of New York, ss. :

A. B., of the city of New York, clerk, being duly sworn, says, that on the tenth day of October, 1843, he served a copy of the foregoing appeal on C. Van Santvoord, Esq., the proctor of the appellees, by delivering the same to him personally [or by leaving the same in his office with the person in charge thereof].

A. B.

Sworn, Oct. 10th, 1843,

before me,

GEORGE W. MORTON, U. S. Commissioner.

No. 243. — NOTICE OF PUTTING IN STIPULATION ON APPEAL.

United States Circuit Court for the Southern District of New York.

RAMON DE ZALDO, Appellant }
vs.
 ELISHA BURGESS, Appellee. }

GENTLEMEN, — Please take notice, that the stipulation to be filed by the above named appellant on the appeal made herein, will be executed and given by Andrew P. de la Pena, merchant, of No. 81 Front street, and whose residence is at No. 207½ William street, in the city of New York, — and Charles de Zaldo, merchant, of No. 81 Front street, and whose residence is at No. 74 Walker street, in said city.

And please further take notice, that the aforesaid sureties will severally attend at the office of the clerk of the District Court, on Tuesday next, the sixth day of August instant, at eleven o'clock in the forenoon of that day, to execute said stipulation; and that they will at the same time and place justify as good and sufficient sureties herein.

Yours, &c.,

EDGAR LOGAN,
 Proctor for Appellant.

New York, August 2d, 1844.

To BURR & BENEDICT, Esqrs.,

Proctors for Appellee.

No. 244. — CERTIFICATE OF THE DISTRICT CLERK TO THE DOCUMENTS.

United States of America, Southern District of New York, ss. :

[L. S.] I, James W. Metcalf, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file, and remaining of record in my office in the cause within mentioned. In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, this second day of April, in the year of our Lord one thousand eight hundred and forty-eight, and of the Independence of the said United States the sixty-second.

J. W. METCALF, Clerk.

No. 245. — INHIBITION FROM THE CIRCUIT COURT TO THE DISTRICT COURT.

[L. S.] The President of the United States to the Judge of the District Court of the United States for the Southern District of New York, Greeting: Whereas in a certain cause of salvage, civil and maritime, in the District Court of the United States for the Southern District of New York, in which A. B. is libellant against the brig Roarer, her tackle, apparel, and furniture, and cargo, and C. D., its claimant, the said District Court made a final decree on the day of last, and the said C. D. thereupon appealed to the Circuit Court of the United States next to be held in said district: Now, therefore, we inhibit and command you, that you do not further proceed in said cause, or attempt, or do, or cause or procure to be attempted or done, any thing to the prejudice of said party appellant during the pendency of his said appeal, so long as the same shall remain undetermined in judgment, so that he may have full and free liberty and power to prosecute the same, under pain of the law and contempt thereof.

Witness the Honorable Brockholst Livingston, Justice of the Supreme Court of the United States, and Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, the day of in the year of our Lord one thousand eight hundred and and of our Independence the

Clerk.

G. F., Proctor.

deposes and says that he is worth the sum of _____ dollars over
and above all his just debts and liabilities.

of _____ to, this day }
185 , before me, }
G. W. M., U. S. Commissioner.

NO. 248. — NOTICE OF HEARING OF APPEAL TO PARTY AND CLERK.

Circuit Court of the United States, in Admiralty, on appeal.

A. B., Appellant. }
vs. }
C. D., Appellee. }

SIR, — The appeal in this cause will be brought on for hearing before the Honorable Samuel Nelson, at the next term of this court, to be held at the City Hall, in the city of New York, on the first Monday of April next.

Dated March 22d, 1849.

Yours, &c.,

E. F., Proctor for Appellant.

To G. H., Proctor for Appellee.

[The like to the clerk of the court — in all respects except the address.]

Supreme Court.

NO. 249. — APPEAL FROM THE CIRCUIT COURT TO THE SUPREME COURT.

THE STEAMBOAT NEW JERSEY, HER TACKLE, AP-
PAREL, &c. }
Isaac Newton, Claimant and Appellant, }
vs. }
JOHN H. STEBBINS, Respondent. }

To the Honorable the Supreme Court of the United States:

The appeal of Isaac Newton, the above-named claimant and appellant, respectfully sheweth that on the fourteenth day of November, 1845, the above named John H. Stebbins, filed his libel in the District Court of the United States, for the Southern District of New York, against the steamboat New Jersey, her tackle, apparel, &c., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by him to the sloop Hamlet, and her cargo, by collision with the said steamboat New Jersey, on the Hudson River, in the State of New York, and that the said steamboat New Jersey was arrested upon process issued upon said libel, and was discharged on your petitioner's filing his claim and entering into stipulations, and your petitioner thereupon filed his answer to said libel, and the said libellant replied thereto, and such proceedings were had in the said cause that, on the fourteenth day of October, 1846, a final decree was made and pronounced therein by the said District Court, wherein it was in substance adjudged that the said libellant

recover against the steamboat New Jersey, her tackle, &c., the sum of two thousand four hundred and three dollars and seventy-five cents, together with cos's.

And that, after such final decree, your petitioner duly appealed therefrom to the Circuit Court of the United States for the Southern District of New York, and the said cause was removed thereby into the said Circuit Court, and there tried anew; and such proceedings were had in the said Circuit Court, that afterwards, on the eleventh day of November, 1847, the said Circuit Court made a final decree in the said cause, whereby it was decreed that the said decree of the District Court be in all things affirmed, with costs, and that the said appellee have execution, and that the stipulators cause their stipulations to be fulfilled; which said decree of the said Circuit Court is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore, this appellant appeals from the whole of said decree of said Circuit Court, to the Supreme Court of the United States, and respectfully prays that the decree of the said Circuit Court, and the libel, answer, pleadings, depositions, evidence, and proceedings, in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the Circuit Court, and every part thereof, may be reversed, and a decree made dismissing said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

I. NEWTON.

Dated, New York, Nov. 20, 1847.

C. VANSANTVOORD, Proctor for Appellant.
H. S. DODGE, Advocate.

No. 250. — BOND ON APPEAL.

Circuit Court of the U. S. of America, Southern District of New York, in the Second Circuit.

THE STEAMBOAT NEW JERSEY, HER TACKLE, &c.	}
Isaac Newton, Claimant and Appellant,	
<i>vs.</i>	
JOHN H. STEBBINS, Libellant and Appellee.	

Know all men by these presents, that we, Isaac Newton and Daniel Drew, of the city of New York, and Elijah Peck, of Flushing, in the county of Queens, are held and firmly bound, unto the above named John H. Stebbins, in the sum of five thousand dollars, to be paid to the said appellee; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twentieth day of November, in the year of our Lord one thousand eight hundred and forty-seven.

Whereas, the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the Circuit Court of the United States, for the Southern District of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

I. NEWTON. [L. s.]

DANIEL DREW. [L. s.]

ELIJAH PECK. [L. s.]

Sealed and delivered, and taken and acknowledged, this twentieth day of November, 1847, before me,

DAVID L. GARDINER, U. S. Commissioner.

United States of America, Southern District of New York, ss.

Daniel Drew and Elijah Peck, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five thousand dollars, over and above all his just debts and liabilities.

DANIEL DREW,

ELIJAH PECK.

Sworn to, this twentieth day of November, A.D. 1847, before me,

DAVID L. GARDINER, U. S. Commissioner.

I approve the above bond and the sufficiency of the sureties thereto.

SAMUEL R. BETTS.

Nov. 20, 1847.

No. 251. — CITATION.

By the Honorable Samuel R. Betts, one of the Judges of the Circuit Court of the United States for the Southern District of New York, in the second circuit.

To John H. Stebbins:

Whereas, Isaac Newton, claimant, of the steamboat New Jersey, her tackle, &c., has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the Circuit Court of the United States for the Southern District of New York, in the second circuit, made in favor of you, the said John H. Stebbins, against the said steamboat New Jersey, her tackle, &c., and has filed the security required by law; you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the twenty-second day of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the Southern District of New York, in the second circuit, the twenty-second day of November, in the

year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-second.

SAMUEL R. BETTS.

No. 252. — AFFIDAVIT OF SERVICE OF CITATION AND APPEAL.

Southern District of New York, ss.

Andrew H. Hitchcock, being duly sworn, saith that he served on the appellee, John H. Stebbins, on the twenty-second day of November, 1847, a copy of the appeal, and a copy of the citation, filed in this cause with the clerk of the Circuit Court, in and for the Southern District of New York, on said twenty-second day of November, by delivering said copy of the citation to the said appellee personally, and by leaving said copy appeal for said appellee in the clerk's office of the Circuit Court aforesaid.

A. H. HITCHCOCK.

Sworn to, this fourth day of December, 1848, before me,

J. W. NELSON, U. S. Comr.

No. 253. — RETURN, FROM THE CIRCUIT COURT TO THE SUPREME COURT.

United States of America, Southern District of New York, ss. :

I, Alexander Gardiner, Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office, in the cause within named.

[L. s.]

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the second circuit, this fourth day of December, in the year of our Lord one thousand eight hundred and forty-eight, and of the Independence of the said United States the seventy-third.

ALEX. GARDINER.

No. 254. — BOND TO THE CLERK FOR COSTS.

Supreme Court of the United States of America.

A. B., Claimant of The Schooner Sea
Flower, her tackle, &c.,

Appellant,

vs.

C. D.,

Libellant and Appellee.

Bond for Costs.

Know all men by these presents, that we, E. F. and G. H., are held and firmly bound unto William T. Carrol, Esq., Clerk of the Supreme Court of the

United States, in the sum of two hundred dollars, to be paid to the said clerk, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the day of in the year of our Lord one thousand eight hundred and

Whereas, the above-named appellant has prosecuted an appeal from the Circuit Court of the United States for the Southern District of New York, to this court, to reverse the final decree rendered in the above entitled suit, by the Circuit Court of the United States for the Southern District of New York, in the second circuit:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall pay to said clerk all costs which he may be entitled to demand of said appellant in this cause, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

E. F.

G. H.

Sealed and delivered, and taken and }
acknowledged, this day of }
184 , before me, }

RICHARD E. STILWELL,

U. S. Commissioner.

United States of America, Southern District of New York, ss. :

E. F. and G. H., the within obligors, being duly sworn, depose and say, each for himself, that he is worth the sum of four hundred dollars over and above all his just debts and liabilities.

Sworn to this day }
of A. D. 184 , before me, }

RICHARD E. STILWELL,

U. S. Commissioner.

No. 255. — NOTICE OF APPEARANCE. — (*Ante*, page 359.)

No. 256. — TESTIMONY TAKEN BY COMMISSION TO BE USED IN THE SUPREME COURT — AFFIDAVIT TO PROCURE ORDER THAT COMMISSION ISSUE.

U. S. Supreme Court.

DAVID W. WETMORE

vs.

THE STEAMBOAT GRANITE STATE, &c. }

Southern District of New York, ss.

David W. Wetmore, of said district, being duly sworn, says that an appeal has been taken in this cause to the Supreme Court of the United States, and that

said cause is now pending on said appeal in said Supreme Court, and that the testimony of C. W. Goddard, James H. Husted, John McCreery, Luke Mahan, and Alfred Russell, and Hugh Byrnes, and Captain John Schenck, is material and necessary to him upon the hearing of the appeal in this cause, as he has been advised by his counsel in this cause, Robert D. Benedict, Esq., who resides at No. 305 Adelphi Street, Brooklyn, and that without such testimony it would be unsafe for him to proceed to the hearing of the said cause; and that said witnesses each, and all of them, reside in, or do business in the city of New York.

DAVID W. WETMORE.

Sworn to before me this 31st

Oct., 1865.

WM. D. JONES,

Notary Public, N. Y. Co.

NO. 257. — ORDER THAT A COMMISSION ISSUE.

U. S. Supreme Court.

DAVID W. WETMORE

vs.

THE STEAMBOAT GRANITE STATE, &c. }

On the affidavit hereto annexed, and on motion of Benedict, Burr & Benedict, libellant's proctors, it is directed and ordered that a commission issue out of the Circuit Court of the United States, for the Southern District of New York, directed to Charles W. Newton, Esq., United States Commissioner, to take the testimony on interrogatories to be annexed thereto, of C. W. Goddard, James W. Husted, John McCreery, Luke Mahan, and Alfred Russell, Hugh Byrnes, and Captain John Schenck. And it is further ordered that such commission be not issued except upon interrogatories to be filed by the libellant, and notice to the claimants or their agent or attorneys, accompanied with a copy of said interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice.

Dated Oct. 31, 1865.

S. NELSON.

NO. 258. — NOTICE OF GRANTING OF THE ABOVE ORDER.

GENTS,—Please take notice that the within is a copy of an order duly made in this cause, and the affidavit on which the same was granted.

Nov. 4, 1865.

Yours, &c.,

BENEDICT, BURR & BENEDICT,

Libellant's Proctors.

To OWEN, GRAY & OWEN,

Claimant's Proctors.

No. 259. — AFFIDAVIT OF SERVICE OF THE ABOVE ORDER AND AFFIDAVIT.

U. S. Supreme Court.

DAVID W. WETMORE
vs.
 THE STEAMBOAT GRANITE STATE, &c. }
Southern District of New York, ss.

Alfred T. Stewart, of the said city, being duly sworn, doth depose and say that he did, on the third day of November, in the year one thousand eight hundred and sixty-five, serve Owen, Gray & Owen, claimant's proctors in the above-entitled action, with an order and affidavit of which the annexed is the original order and affidavit, by delivering the same to J. H. Gray, one of the firm.

ALFRED T. STEWART.

Sworn to, before, me this
 4th day of Nov., 1865.

WM. D. JONES,

Notary Public, N. Y. Co.

No. 260. — THE COMMISSION.

The President of the United States of America to Charles W. Newton, Esq., U. S. Commissioner, Greeting :

Know ye, that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority, diligently to examine upon their corporal oaths, or affirmations, before you to be taken, and upon the interrogatories and cross-interrogatories hereunto annexed, C. W. Goddard, James W. Husted, John McCreery, Luke Mahan, Alfred Russell, Hugh Byrnes, and Capt. John Schenck, as witnesses on the part of the libellant in a certain cause now pending undetermined in the Supreme Court of the United States of America, wherein David W. Wetmore, is libellant, &c., *vs.* the Steamboat Granite State, &c., claimants and appellants. And we do further empower you to examine on the same behalf, and in like manner, any other person or persons who may be produced as witnesses before you; and we do hereby require you , before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, and send by mail directed to Supreme Court of the United States, care of D. W. Middleton, Esq., clerk, Washington, D. C., as soon as may be convenient after the execution of this commission, and that you return the same, when executed as above directed, with the title of the cause indorsed on the envelope of the commission.

No. 261. — CERTIFICATE OF THE CLERK.

I, Kenneth G. White, Clerk of the Circuit Court of the United States for the Southern District of New York, do hereby certify that the foregoing papers are

true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the second circuit, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and sixty-five, and of the Independence of the said United States the ninetieth.

[L. s.]

KENNETH G. WHITE, Clerk.

NO. 262. — INTERROGATORIES.

Interrogatories to be administered to C. W. Goddard, James W. Husted, Luke Mahan, Alfred Russell, Hugh Byrnes, and Capt. John Schenck, witnesses to be examined on behalf of the libellant, under a commission issued out of the Circuit Court of the United States for the Southern District of New York, in a cause wherein David W. Wetmore is libellant, and the steamboat Granite State is respondent.

First. What is your name, residence, and occupation?

Second. Do you know the parties to this action, or either or which of them? Interrogatories to C. W. Goddard and James W. Husted;

Third. If you have stated that you are in any way connected with the office of captain at the port of the city of New York, then state if there were any regulations of the said port in the year 1857; and if so, annex a copy thereof to your deposition.

To all the witnesses:

Fourth. What experience have you had as to navigation in the harbor of New York, and as to the mooring of vessels at the piers in said harbor?

Fifth. What is the usage or custom of lighters or barges in said port as to mooring at the end of said piers?

Sixth. What is the usage or custom of lighters or barges so moored as to carrying lights at night or having a watch kept on them?

Seventh. From your experience in such navigation and mooring, state whether or not it would be necessary or proper for a lighter or barge moored at the end of a pier at night to carry a light, and give the reasons why it would or would not be necessary or proper.

Eighth. From such experience, state whether or not it would be necessary or proper for a lighter or barge loaded with bar iron, and so moored at night to have a watch on deck, and give the reasons.

Ninth. Do you know any other matter or thing which may be of benefit to the libellant herein? If so, state the same as fully as if you had been specially interrogated thereto.

BENEDICT, BURR & BENEDICT,
Libellant's Proctors.

No. 268. — CROSS-INTERROGATORIES.

Cross-interrogatories to be administered to C. W. Goddard, James W. Husted, Luke Mahan, Alfred Russell, Hugh Byrnes, and Capt. John Schenck, witnesses to be examined on behalf of the libellant, under commission, in a certain cause wherein David W. Wetmore is libellant, and the steamer Granite State is respondent.

First cross-interrogatory (to all the witnesses): If in answer to the first and second direct interrogatories you say you reside in New York and know the parties, then state how long you have resided in New York and how long you have known the parties; state also whether you resided, and where, in New York in the fall and winter of 1857, and in what particular business you were then engaged, and in whose employment you were, and how long you had been so employed; state also your age.

Second cross-interrogatory (to all the witnesses): Have you been heretofore examined as a witness in this cause? Were you in anywise connected with the barge Rambler before her loss? If so, state in what capacity.

Third cross-interrogatory (to all of the witnesses): If in answer to the fourth interrogatory you state that you have had experience as to the navigation and mooring of vessels in the harbor of New York, then state when such experience first commenced; what kind and class of vessels you were engaged with, and give the name of each; how long you were connected with them, and in what capacity, and by whom you were employed.

Fourth cross-interrogatory (to all of the witnesses): Have you not known or heard of lighters or barges which had been lying at the end of a pier discharging or receiving cargo during the day, to haul around into the slip at night and lie there over night? Have you not known or heard of lighters or barges, when lying at night at the end of a pier, or in the slip, to have a light set or in some way displayed upon her? Have you not known or heard of lighters and barges lying in a slip or at the end of a pier at night, having a keeper or watchman on board?

Fifth cross-interrogatory (to C. W. Goddard and James W. Husted): If in answer to the third interrogatory you say that you were connected with the office of captain of the port of New York, then state when you first became connected with that office, and what your connexion therewith has been since then. Have you any superior officer? If so, who? Have you any particular district under your charge or supervision? If so, what and how long has it been so? If you produce a copy of the regulations of the port in the year 1857, state how you know that they are the regulations then in force; state also whether what you produce are all the regulations upon the subject; state whether the harbor master had any other or different rules or regulations from

those which you have produced. If so, produce and annex a copy of such other rules and regulations to your depositions.

OWEN, GRAY & OWEN,
Claimant's Proctors.

The execution of the within commission will appear as per depositions hereto annexed; all of which is respectfully submitted.

CHAR. W. NEWTON,
United States Commissioner.

No. 264. — INSTRUCTIONS TO COMMISSIONERS, ANNEXED TO THE COMMISSION.

Annexed to the commission is an extract from the statutes of the State of New York relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the commission. But as it does not comprise everything necessary to be attended to by the commissioners, they are requested to observe the following more ample instructions :

I. All the commissioners named in the commission should have notice of the time and place of executing it, and if any of them do not act, let the fact that they were notified, or could not be notified, and their reasons for not acting, be stated.

II. The commission must be executed by _____, the commissioner named therein.

III. The acting commissioner will examine the witnesses separately, after publicly administering to them the following oath or affirmation.

"You do swear that the answers that shall be given by you to the interrogatories proposed to you shall be the truth, the whole truth, and nothing but the truth. So help you God."

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form: "You do swear in the presence of the ever living God," and while so swearing he may or may not hold up his hand, in his discretion.

Or, if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form: "You do solemnly, sincerely, and truly declare and affirm," omitting the words "So help you God."

IV. The general style or title of the depositions must be drawn up in the following manner:

Deposition of witnesses produced, sworn (or affirmed), and examined the _____ day of _____, in the year one thousand eight hundred and _____, at _____, under and by virtue of a commission issued out of the _____, in a certain cause therein depending and at issue between _____, defendant _____ as follows:

A. B., of (insert his place of residence and occupation), aged _____ years

and upwards, being duly and publicly sworn, (or affirmed), pursuant to the directions hereto annexed, and examined on the part of the _____, doth depose and say as follows: First. To the first interrogatory he saith, &c. (Insert the witness's answer. Second. To the second interrogatory he saith, &c., and so on throughout.

If he cannot answer, let him say that he knoweth not.

V. If there be any cross-interrogatories, the witness will go on thus:

First. To the first cross-interrogatory he saith, &c., and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to this _____ day of _____, 18____, before

_____, Commissioner.

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be indorsed by the acting commissioners in this manner:

At the execution of a commission for the examination of witnesses between _____, defendant, this paper writing was produced and shown to (insert the witness's name), and by him deposed unto at the time of his examination before

_____, Commissioners.

VIII. The acting commissioners will sign their names to each half-sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath, and certify thereto:

"You do solemnly swear that you will truly and faithfully interpret the oath and interrogatories to be administered to _____, a witness now to be examined out of the English language into the _____ language, and that you will truly and faithfully interpret the answers of the said _____ thereto, out of the _____ into the English language."

Let the depositions be subscribed by the interpreter as well as by the witness, and certified by the acting commissioner, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day _____ of _____, of 18____, before

_____, Commissioner.

X. The commissioner will make return on the back of the commission by indorsement thus:

"The execution of this commission appears in certain schedules hereunto annexed.

_____, Commissioner.

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, cross-interrogatories, depositions, and exhibits must be folded into a packet and bound

with tape. The acting commissioners are to set their seal at the several meetings or crossings of the tape, indorse their names on the outside, and direct it thus:

To _____, Esq., Clerk of the _____, at _____.

XII. When the commission is thus executed, made up, and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

XIII. If there be no direction on the commission specifying the manner in which it is to be returned, then it must either be delivered to the court by one of the acting commissioners personally, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath before one of the judges or the clerk of the court:

"That he received the same from the hands of A. B., one of the commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post-office, he making the following indorsement thereon:

"Deposited in the post office at _____, this _____ day of _____, 18 _____, by me,

_____, Commissioner."

In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter bag of such vessel, he making upon the commission the following indorsement:

"Deposited in the letter bag of the _____, now lying at _____, and bound for the port of New York, this _____ day of _____, 18 _____, by me,

_____, Commissioner."

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call, on his arrival at this place, upon _____, who will direct him as to its delivery.

NO. 265. — THE DEPOSITIONS.

Depositions of witnesses produced and sworn and examined on the 30th day of November and 29th day of December, in the year one thousand eight hundred and sixty-five, at the office of Charles W. Newton, United States Commissioner for the Southern District of New York, in a certain cause now pending undetermined in the Supreme Court of the United States, between David Wetmore, libellant, &c., *vs.* The Steamboat Granite State, &c., claimants and

appellants, as follows; which said depositions are taken under and by virtue of the annexed commission. All of which is respectfully submitted.

[L. s.]

CHAS. W. NEWTON,

U. S. Commissioner named in the annexed Commission.

First. To the first interrogatory he saith :

A. My name is John Schenck ; residence No. 186 Nassau Street, Brooklyn. I am captain of a steam-tug.

Second. To the second interrogatory he saith :

A. I know Mr. Wetmore and some of the people connected with the Granite State.

Fourth. To the fourth interrogatory he saith :

A. I have had eighteen years' experience in navigation in the harbor of New York, and in mooring of vessels at the piers in said harbor.

Fifth. To the fifth interrogatory he saith :

A. It is the custom for them to lie there whenever they want to.

Sixth. To the sixth interrogatory he saith :

A. I never saw any light, on any lighter or barge, while lying at the end of a pier. It is very seldom you ever see a watch kept, on a lighter or barge at the end of a pier, except there is cargo on them.

Seventh. To the seventh interrogatory he saith :

A. From my experience I should say it would not be necessary or proper for a lighter or barge moored at the end of a pier at night to carry a light. There is only one class of vessel that carry a light, that is, when at anchor in the stream, for the reason that a light on a vessel at the end of a pier might, in a dark or foggy night, be taken for a vessel at anchor in the stream, and vessels thereby might be induced to run into the dock.

Eighth. To the eighth interrogatory he saith :

A. I should not suppose it would be necessary to have a watchman on board of a barge or lighter moored at the end of a pier at night, for the reason a watchman could do no good. I don't know that it would be proper to have a watchman, as one could do no good.

Ninth. To the ninth interrogatory he saith :

A. No, sir.

JOHN SCHENCK.

Cross-interrogatories.

First. To the first cross-interrogatory he saith :

A. I have lived in Brooklyn thirteen years; I have known Mr. Wetmore ten years, and some of the other parties about twelve years. I was in New York in the fall and winter of 1857. I was engaged in towing vessels around the harbor in the fall and winter of 1857. I was in my own business. I am now thirty-eight years of age.

Second. To the second cross-interrogatory he saith :

A. I have been heretofore examined as a witness in this cause on the part of

Mr. Peck. I was in no way connected with the Rambler before her loss, except in towing her.

Third. To the third cross-interrogatory he saith :

A. My experience first commenced about eighteen years ago. I was engaged with tow and passenger boats. I was on the steamer Connecticut, the Hero, Cataline, Duncan C. Pell, King Philip, Nahanten, Norwalk, Charles Durant, Tempest, M. K. Wilson, and others, as engineer of some and captain of others; when I was on Hero and Cataline I was employed by the captains of the boats; for the last ten years I have owned boats myself.

Fourth. To the fourth cross-interrogatory he saith :

A. I have not known or heard of lighters or barges which had been lying at the end of a pier discharging or receiving cargo during the night, to haul around into the slip at night and lie there over night; I have not known or heard of lighters or barges when lying at night at the end of a pier or in the slip, to have a light set or in any way displayed on them; I don't know that ever heard or knew of a lighter or barge lying in a slip or at the end of a pier at night to have a keeper or watchman on board.

JOHN SCHENCK.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 20th of November, 1865, before

CHAS. W. NEWTON,
United States Commissioner.

First. To the first interrogatory he saith :

A. My name is Hugh Byrne. I reside at No. 330 Pearl Street, in the city of New York. I am a stevedore.

Second. To the second interrogatory he saith :

A. I know Mr. Wetmore; none of the others.

Fourth. To the fourth interrogatory he saith :

A. I have no experience in navigating vessels. I have had an experience of fifteen years in the mooring of vessels at or in the piers in the harbor of New York.

Fifth. To the fifth interrogatory he saith :

A. It is the custom of lighters or barges in said port to come to the end of the pier or piers and take in cargo, and lie there until they would get their load in.

Sixth. To the sixth interrogatory he saith :

A. I never see a light on a lighter at the end of a pier in the port of New York in my life. I can't answer as to watchmen.

Seventh. To the seventh interrogatory he saith :

A. I think it would not be right for a lighter at the end of a pier to carry a light at night, for the reason that a vessel bound up or down the river might take her for a vessel at anchor in the stream, and trying to run inside of her, run into the dock.

Eighth. To the eighth interrogatory he saith :

A. That depends upon the man that owns the iron.

Ninth. To the ninth interrogatory he saith :

A. All I could say more is, that a watchman on a lighter or barge at night, at the end of a pier, could not prevent a collision.

Cross-interrogatories :

First. To the first cross-interrogatory he saith :

A. I have resided in New York all the time since June, 1849. I have known Mr. Wetmore, I should think, twelve years. I was in the city of New York in the fall of 1857, engaged in the stevedore business, in the employ of Thomas Dunham, or Dunham & Diamond. I was in their employ since 1849. I am thirty-nine years old, to the best of my knowledge.

Second. To the second cross-interrogatory he saith :

A. I have not been examined as a witness heretofore in this cause. I was in nowise connected with the barge Rambler before her loss.

Third. To the third cross-interrogatory he saith :

A. As to navigation, I have stated that I have none. My experience as to mooring vessels, &c., commenced in the year 1849. I was engaged as stevedore on schooners, barks, and ships. I was connected with them some sixteen years as stevedore. I can name a large number : there was the lighter W. T. Conquest ; schooner, Hartstein ; bark, Mary Morris ; ship, Martha's Vineyard ; and a great many others, if necessary.

Fourth. To the fourth cross-interrogatory he saith :

A. I have known of lighters or barges which had been lying at the end of a pier discharging or receiving cargo during the day to haul around into the slip at night and lie there over night in some cases. I have never known or heard of lighters or barges when lying at night at the end of a pier, or in the slip, to have a light set or in some way displayed on them ; sometimes I have seen a watchman on board of lighters and barges at the end of piers at night.

HUGH BYRNE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 30th of November, 1865, before

CHAS. W. NEWTON,
United States Commissioner.

First. To the first interrogatory he saith :

A. My name is Luke Mahan. I reside at 152 Johnson Street, in the city of Brooklyn, county of Kings and State of New York. Am by occupation a lighterman.

Second. To the second interrogatory he saith :

A. I am acquainted with Mr. Wetmore, the libellant. I do not know that I have any acquaintance with the other parties.

Fourth. To the fourth interrogatory he saith :

A. I have been as as much as twenty-five years around the harbor of York, off and on ; during which time I have been engaged in the lightering

business, and acquainted with the navigation and mooring of vessels at the piers in said harbor.

Fifth. To the fifth interrogatory he saith :

A. It is the general custom of lighters to moor at the end of a pier at night, either when they are taking in or discharging cargo ; I have done so myself, and seen others do it. I might take a notion, if I had my cargo all in, to back into the slip, but if not, I would make fast to the end of the pier and lie there.

Sixth. To the sixth interrogatory he saith :

A. I have never known or taken notice of a barge or lighter lying at the end of a pier at night having a light on board, and there is no custom, that I know of, requiring a light. I know that I never had one. As to a watchman being kept on board of a barge or lighter, it is merely to prevent stealing. I have known of watchmen being put on board to watch the goods. I do it myself every week ; it is done very often, but simply to protect the goods on board.

Seventh. To the seventh interrogatory he saith :

A. I don't think it is. I would sooner lie at the end of a pier at night with a barge without a light than with a light on, for the reason that a vessel lying in the stream always has a light on at night ; and if the vessel lying at the end of a pier carries a light, these small class vessels, schooners, sloops, and lighters, which are beating in the river, will mistake her for a vessel lying in the stream, and will try to run to the leeward of her or ahead of her ; and if you cannot head her, you must go to the leeward of her ; and when you get close to her, you either have to run into her, or into the wharf and injure your vessel.

Eighth. To the eighth interrogatory he saith :

A. If a man thought it was necessary to prevent stealing his iron, he might put a watch on board ; but if not, I do not think it is necessary or proper to have a watch on board because of a dark night ; if one was on board, he could not prevent vessels from running into him, nor could he tell the name of a vessel that might run into him ; that is, he might tell her name and might not.

Ninth. To the ninth interrogatory he saith :

A. I do not.

Cross-interrogatories :

First. To the first cross-interrogatory he saith :

A. I have been in Brooklyn, off and on, for the last thirty years, but doing business in the harbor of New York most of the time. I have known Mr. Wetmore, by sight, for the last twenty years. I was engaged in the lightering business in the port of New York during the fall and winter of 1857, and was employed by George W. Thompson, I think. I have been away from him about eight or nine years as near as I can recollect. I worked for him in the neighborhood of fourteen years, off and on. I am about fifty-six years of age now, sir.

Second. To the second cross-interrogatory he saith :

A. I have not been a witness before in this cause. I was in no way con-

nected with the barge Rambler before her loss. I have seen her, that's all.

Third. To the third cross-interrogatory he saith :

A. About twenty-five years ago, more or less, I was engaged with all kinds of vessels in the lightering business — all lighters. I worked on board the lighters Union, Suffolk, Adaline, Fret, Davis, Linwood, and the Flirt, and the Garner. I have been aboard so many lighters that I don't know that I can give the names of all of them. I have been in the employ of Alderman Franchee, George W. Thompson, S. L. Mitchell; I am still in the employ of Mr. Mitchell, and have charge of all of his lighters.

Fourth. To the fourth cross-interrogatory he saith :

A. I have heard of some lighters going into the slip at night when they had all their cargo in. I have not known of their having a light on board at night, not for twenty-five years, to the best of my opinion. I have known of watchmen being on board when there is cargo on board, but we do not keep one unless we have cargo.

LUKE MAHAN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 29th of December, 1865, before

[L. s.]

CHAS. W. NEWTON,
United States Commissioner.

NO. 266. — MANDATE OF THE SUPREME COURT.

UNITED STATES OF AMERICA, SS.

[L. s.] The President of the United States of America, to the Honorable the Judges of the Circuit Court of the United States for the Southern District of New York, Greeting: Whereas, lately, in the Circuit Court of the United States for the Southern District of New York, before you, or some of you, in a cause between The Steamboat Syracuse, her tackle, &c., The Albany and Canal Line, claimants and appellants, and

Joseph W. Hancox, libellant and appellee, wherein the decree of the said Circuit Court, entered in said cause, is in the following words, viz. :

“It is ordered that the decree of the District Court herein, be in all things reversed, and that the libel in this case be dismissed with costs.

“And it is further ordered that the Albany and Canal Line, claimants of the steamer Syracuse, recover in this cause against Joseph W. Hancox, the libellant herein, the sum of three hundred and sixty dollars and ninety-six cents, costs of the claimants in the District Court as taxed, together with the sum of two hundred and twenty-eight dollars and sixty-five cents, costs of the said claimants in this court, amounting in all to the sum of five hundred and eighty-nine dollars and sixty-one cents. And is further ordered that, unless an appeal be taken from this decree within the time prescribed by the rules and practice of

this court, then that the said claimants and appellees have execution to satisfy this decree," as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears; and, whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-nine, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed with costs, and that the said claimants and appellants recover against the said libellant and appellee, Joseph W. Hancox, one hundred and seventy-nine dollars and ninety-nine cents, for their costs herein expended, and have execution therefor.

April 25th, 1870.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Salmon P. Chase, Chief-Justice of said Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-nine.

Costs of claimants and appellants:

Clerk . . . \$159 99

Attorney . . . 20 00

\$179 99

Taxed by

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

No. 267. — DECREE OF THE CIRCUIT COURT, AFTER THE REMITTITUR FROM THE SUPREME COURT.

On reading and filing the remittitur and mandate of the Supreme Court, and on motion of Mr. _____ proctor for the libellant (or the defendant, or the claimant), It is ordered, adjudged, and decreed (according to the mandate), and that the said _____ have execution of this decree.

No. 268. — A SUGGESTION TO THE SUPREME COURT OF THE UNITED STATES, PRAYING FOR A PROHIBITION TO A DISTRICT COURT PROCEEDING IN ADMIRALTY.

To the Honorable the Supreme Court of the United States of America.

The suggestion of Samuel B. Davis, against the District Court of the United States for the District of Pennsylvania, respectfully alleges:

That he is a lieutenant in the navy of the French Republic, and commander of the *Cassius*, a vessel of war of the Republic, in her service, and duly commissioned to cruise against her enemies and make prizes of their ships and goods, as is proved by his commission, which he offers to produce to the court.

That by the laws of nations, and by treaties between the French Republic and the United States, trials of capture on the high seas, of vessels brought within the jurisdiction of the Republic, and all questions incidental thereto, belong exclusively to the tribunals of the Republic, and to no other tribunals, and the vessels of war of the Republic, and the officers commanding them, cannot of right be sued or arrested in the ports of the United States for captures made on the high seas, and brought for legal adjudication into the ports of the Republic; and the District Courts of the United States ought not to entertain jurisdiction, or hold pleas of such captures. That by the laws of nations, the vessels of war of belligerent powers may take, as prizes of war, the ships and goods of their enemies, and bring them into the ports of the sovereign under whom they act, and the commanders of such vessels of war are not amenable before the tribunals of neutral powers for their conduct therein, but only to their own sovereign under whom they act.

Yet one James Yard, a citizen of the State of Pennsylvania, as owner of the schooner *William Lindsay*, and her cargo, has filed his libel in the District Court of the United States for the District of Pennsylvania, proceeding as a court of admiralty and maritime jurisdiction, against the said vessel of war the *Cassius*, and against the said Samuel B. Davis, her commander, and, has caused them to be arrested by the process of said court, to answer for damages for capturing the said schooner on the high seas, and carrying her into the Port de Paix, a part of the French Republic.

Wherefore the said Samuel B. Davis respectfully requests that a writ of prohibition may be issued out of this Honorable Court to the Judge of the District Court of the United States for the District of Pennsylvania, prohibiting him from holding the plea aforesaid concerning the premises aforesaid, anywise further before him.

SAMUEL B. DAVIS.

A. B., Proctor and Advocate.

NO. 269. — A WRIT OF PROHIBITION, FROM THE SUPREME COURT OF THE UNITED STATES TO A DISTRICT COURT PROCEEDING AS A COURT OF ADMIRALTY.

The President of the United States of America, to the Honorable Richard Peters, Judge of the United States for the District of Pennsylvania, Greeting:

Whereas, James Yard, a citizen of the State of Pennsylvania, has filed his libel in the District Court of the United States for the District of Pennsylvania, proceeding as a court of admiralty and maritime jurisdiction, against

the vessel of war, the *Cassius*, belonging to the French Republic, and against Samuel B. Davis, her commander, a lieutenant of the French Republic, and has caused them to be arrested by process issuing out of said court on the said libel, to answer for damages for capturing, on the high seas, the schooner *William Lindsay*, and her cargo, and carrying them into a port of the said Republic, as prize of war, of which cause the said District Court, proceeding as a court of admiralty and maritime jurisdiction, has not jurisdiction :

Now, therefore, we do prohibit you, that you do not hold the plea aforesaid, concerning the premises aforesaid, anywise further before you.

Witness the Honorable John Jay, Chief-Justice of the Supreme Court of the United States, the 10th day of August, in the year of our Lord one thousand seven hundred and ninety-five, and of the independence of the United States of America the eleventh.

JOHN TUCKER, Clerk.

A. B., Proctor and Advocate.

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